

# EXHIBIT

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION

4     - - - - - MDL NO. 2804  
                     :  
5     In re: NATIONAL PRESCRIPTION : CASE NO. 1:17-MD-2804  
      OPIATE LITIGATION             :  
6                                       :  
                     :  
7     THIS DOCUMENT RELATES TO:     :  
      "Case Track Nine"             :  
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Highly Confidential - Subject to Further  
Confidentiality Review

VIDEOTAPED DEPOSITION OF ALBERTSONS 30(b)(6) -  
ANTHONY PROVENZANO

August 10, 2023

Reported by  
Brooke R. Bohr  
IDAHO CSR No. 753  
Federal Certified Realtime Reporter  
NCRA Registered Professional Reporter

1 VIDEOTAPED DEPOSITION OF ALBERTSONS  
2 30(b)(6) - ANTHONY PROVENZANO, taken at the  
3 instance of the Plaintiffs, at HOLLAND & HART,  
4 800 W. Main Street, Suite 1750, in the City of  
5 Boise, State of Idaho, commencing at 10:11 a.m.,  
6 on August 10, 2023, before Brooke R. Bohr, Court  
7 Reporter, Registered Professional Reporter by  
8 Testing, a Notary Public in and for the State of  
9 Idaho, pursuant to notice, and in accordance with  
10 the applicable rules of civil procedure.

11

12

13 A P P E A R A N C E S

14

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12 PRESENT VIA ZOOM:

13  
14 Gina Veldman - Tech  
15 Evan M. Janush  
16 Julia Emfinger  
17 Leila Ayachi  
18 Sadie Turner

19

20 ALSO PRESENT:

21 David Cromwell, Videographer

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1 W I T N E S S

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3 ALBERTSONS 30(b)(6) - ANTHONY PROVENZANO Page:

4 Examination by Mr. Lichter 6

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6

7 E X H I B I T S

8 Page:

9 1 Amended Notice of Deposition and 9  
Document Request

10

11 2 LinkedIn Profile 13

12 3 Defendant Albertsons' Supplemental 20  
Objections and Answers To  
13 Plaintiff's Combined Interrogatories  
To Chain Pharmacy Defendants

14

15 4 Slip Sheet 41

16 5 Spreadsheet 54

17 6 Annual Controlled Substance Training 68  
Bates No. ALB-MDLCT9-00386118 through  
18 ALB-MDLCT9-00386152

19 7 E-mail Bates No. ALB-MDLCT9-00015802 76  
through ALB-MDLCT9-00015807

20

21 8 E-mail Bates No. ALB-MDLCT9-00014044 95  
through ALB-MDLCT9-00014046

22

23 9 E-mail Bates No. ALB-MDLCT9-00033665 112  
through ALB-MDLCT9-00033666

24 10 E-mail Bates No. ALB-MDLCT9-0041477 119  
through ALB-MDLCT9-0041478

25

1 BOISE, IDAHO

2 August 10, 2023, 10:11 a.m.

3

4 THE VIDEOGRAPHER: We are now on the record.

5 My name is David Cromwell. I'm a

6 videographer for Golkow Litigation Services.

7 Today's date is August 10th, 2023, and

8 the time is 10:11 a.m. This video deposition is

9 being held in Boise, Idaho, in the matter of

10 National Prescription Opiate Litigation. The

11 deponent in Anthony Provenzano.

12 Counsel, please identify yourselves for

13 the video record.

14 MR. LICHTER: Jay Lichter for plaintiff,

15 Tarrant County, Texas.

16 MR. DORAN: Brett Doran from

17 Greenberg Traurig for the defendant, Albertsons,

18 today.

19 THE VIDEOGRAPHER: The court reporter is

20 Brooke Bohr and will now swear in the witness.

21

22 ALBERTSONS 30(b)(6) - ANTHONY PROVENZANO,

23 produced as a witness at the instance of the

24 Plaintiff, having been first duly sworn, was

25 examined and testified as follows:

1 EXAMINATION

2 BY MR. LICHTER:

3 Q. All right. Good morning,  
4 Mr. Provenzano.

5 A. Good morning.

6 Q. Please state and spell your name for  
7 the record.

8 A. Anthony Provenzano, A-n-t-h-o-n-y  
9 P-r-o-v-e-n-z-a-n-o.

10 Q. And you've had your deposition taken  
11 before, correct?

12 A. Correct.

13 Q. Just to go over some basic ground  
14 rules, which you probably are already familiar  
15 with, throughout the deposition I'll be asking  
16 you a series of questions. And your counsel here,  
17 Mr. Doran, might be objecting from time to time to  
18 some of those questions. Just so you know, unless  
19 he specifically instructs you not to answer, I'm  
20 entitled to get a response from you.

21 Do you understand that?

22 A. Yes.

23 Q. Okay. Obviously, we have a court  
24 reporter here taking down everything we're saying.  
25 So it is important that we speak as clearly as we

1 can and try to avoid speaking over each other.

2 Is that okay?

3 A. Yes.

4 Q. Also, some of the questions I ask may  
5 call for a yes or no answer. You may  
6 instinctively want to respond with uh-huh or  
7 huh-uh. That's usually difficult for the court  
8 reporter to take down. So I would ask that we  
9 avoid those types of responses.

10 Is that okay?

11 A. Yes.

12 Q. Okay. Are you taking any medications  
13 today that may impair your ability to give  
14 truthful testimony?

15 A. No.

16 Q. Any reason at all today you wouldn't be  
17 able to give truthful testimony?

18 A. No.

19 Q. Throughout the deposition, we'll be  
20 taking breaks. I'm going to aim to take a break  
21 every hour or so. If for any reason you would  
22 like to take a break while we're -- while the  
23 deposition is going, you can let me know for,  
24 you know, restroom, get a drink of water, anything  
25 like that. I would just ask that when we do take



1 a break, it not be while a question is pending.

2 Is that okay?

3 A. Yes.

4 Q. Okay. And you've had your deposition  
5 taken twice in the New Mexico opioid actions; is  
6 that right?

7 A. Yes.

8 Q. Have you had your deposition taken any  
9 other times?

10 A. I've been deposed once in an unrelated  
11 situation, yes.

12 Q. Okay. What type of situation was that?

13 A. It was in regards to a suit with the  
14 Accreditation Council for Pharmaceutical  
15 Education --

16 THE COURT REPORTER: A what? A suit with --

17 THE WITNESS: Involving the Accreditation  
18 Council For Pharmaceutical Education, ACPE, where  
19 I was on the Board of Directors.

20 THE COURT REPORTER: If you could keep your  
21 voice up for me, that would be great. I just have  
22 a fan over my head.

23 Q. BY MR. LICHTER: And were you a witness  
24 in that case or a party in that case? Both?

25 A. Not a party.

1 Q. Okay. You were a witness?

2 A. Yes.

3 Q. Okay. Did you testify at trial?

4 A. No.

5 Q. And do you know about when that case  
6 happened, what year?

7 A. I'm estimating, 2020.

8 Q. Do you remember how that case  
9 ultimately resolved?

10 A. I don't.

11 Q. You don't know if it settled?

12 A. It's -- it's not still active, but I  
13 don't -- I'm not sure of the final result.

14 Q. Okay. Did you testify as an expert  
15 witness or a fact witness?

16 A. Fact witness.

17 MR. LICHTER: We'll mark this as Exhibit 1.  
18 (Exhibit 1 marked.)

19 Q. BY MR. LICHTER: Have you seen this  
20 document before?

21 A. Yes.

22 Q. Okay. And I'll represent to you this  
23 is Plaintiff's Amended Notice of 30(b)(6)  
24 Deposition served on Albertsons in this action on  
25 July 21st, 2023.

1 Does that sound right?

2 A. Yes.

3 Q. Okay. If you'll turn to page 6 of the  
4 document, this will be Section 3, subject matters  
5 for testimony.

6 Do you see that?

7 A. Yes.

8 Q. And subject to the agreement between  
9 my office and your attorneys, do you understand  
10 that you're here today to testify on behalf of  
11 the Albertsons defendants regarding the topics  
12 described in this notice?

13 A. Yes.

14 Q. Okay. And looking just at the first  
15 set of topics, they are -- they are entitled  
16 Distribution Topics, numbers 1 through 9.

17 Did you speak to anyone to help you  
18 prepare to testify to the distribution topics  
19 here?

20 A. Yes.

21 Q. And who did you speak to?

22 A. I spoke with counsel, Brett, and a  
23 couple of attorneys from -- from his company, some  
24 house attorneys. That's pretty much it.

25 Q. Did you speak to any Albertsons

1 employees, current or past?

2 A. No.

3 Q. Do you know how long each meeting was  
4 with counsel?

5 A. In total? In total, there were three  
6 meetings, four hours, two hours and about eight  
7 hours. That included all topics, not just the  
8 distribution topic though.

9 Q. Okay. And were you shown any  
10 particular documents in preparation for today's  
11 testimony?

12 A. Yes.

13 Q. Documents relating to all topics, as  
14 well?

15 A. Yes.

16 Q. And same thing for the dispensing  
17 topics 10 through 19, did you only speak with  
18 counsel, no other Albertsons employees, to prepare  
19 for today's deposition?

20 A. I spoke with a couple of Albertsons  
21 employees.

22 Q. Do you recall who they were?

23 A. Charles Painter.

24 Do you need me to spell names or  
25 anything?

1 Q. Not Charles Painter.

2 A. That one is as it sounds.

3 Tori Aitken, A-i-t-k-e-n.

4 Q. Anyone else?

5 A. Julie Spier, S-p-i-e-r.

6 Q. Anyone else?

7 A. No.

8 Q. Let's start with Mr. Painter. Do you  
9 recall what subjects you talked to Mr. Painter  
10 about?

11 A. It was asking about investigations  
12 into -- into any specific cases in Texas.

13 Q. Anything else with Mr. Painter?

14 A. Not that I recall.

15 Q. Do you know his job title with  
16 Albertsons?

17 A. He is a compliance manager -- manager  
18 of compliance.

19 Q. How about Tori Aitken? Do you recall  
20 what you spoke to --

21 A. Same.

22 Q. -- her about?

23 A. Similar topics, yes.

24 And she's also a compliance manager.

25 Q. How about Julie Spier?

1           A.     Julie, I asked -- I talked about a  
2     PDMP program in Texas. And she is a Director of  
3     Pharmacy Operations for our southern division.

4           Q.     Do you recall about how long you spoke  
5     to each of the three employees?

6           A.     Total of probably 15 minutes to  
7     30 minutes each. And Julie Spier was just the --  
8     just a -- a message. It wasn't over the phone.

9           Q.     It was an e-mail?

10          A.     It was a Teams message.

11          Q.     Okay. And then toward the end, topics  
12     20 to 22, those are described as Investigations  
13     and Administrative Actions.

14                 Other than Charles Painter,  
15     Tori Aitken, Julie Spier and the topics we just  
16     mentioned, did you speak to anybody else to help  
17     prepare you today to testify as to those topics?

18          A.     No.

19          Q.     Have you brought any documents with you  
20     today?

21          A.     No.

22                 MR. LICHTER: I'll set that one aside and  
23     have the next document marked as Exhibit 2.

24                 (Exhibit 2 marked.)

25          Q.     BY MR. LICHTER: Have you seen this

1 document before?

2 A. Yes. It looks like my LinkedIn  
3 profile.

4 Q. Okay. Yeah. But for some black box  
5 redactions throughout the document, this is a copy  
6 of your current Linked -- LinkedIn profile; is  
7 that right?

8 MR. DORAN: Objection.

9 THE WITNESS: It appears so, yes.

10 Q. BY MR. LICHTER: If we start on page 2  
11 of the document, the section marked "Education,"  
12 you attended the University of Illinois, Chicago  
13 from 1985 to 1988 for a pre-pharmacy degree; is  
14 that right?

15 A. It is not a degree, but, yes,  
16 pre-pharmacy coursework.

17 Q. You attended UIC College of Pharmacy  
18 from 1998 to 1992 for the Pharm D degree; is that  
19 right?

20 A. Correct.

21 Q. And that's located in Chicago, as well?

22 A. Correct.

23 Q. Have you ever been a licensed  
24 pharmacist?

25 A. Yes.

1 Q. In which states?

2 A. Illinois.

3 Q. Any other states?

4 A. No.

5 Q. Are you currently licensed in Illinois?

6 A. Yes.

7 Q. And when is the last time you actually  
8 worked as a pharmacist?

9 A. Dispensing prescriptions? Is that what  
10 you mean by worked as a pharmacist?

11 Q. Yes.

12 A. 1995, estimate.

13 Q. Have you ever had any other formal  
14 education since high school that is not listed  
15 here?

16 A. Certification programs, if that counts  
17 as formal education, yes.

18 Q. What kind of certification programs?

19 A. Various clinical topics. Diabetes, I  
20 was a certified diabetes educator for 15 years.  
21 Other certification programs in asthma, res --  
22 respiratory care, immunizations. There's a number  
23 of them. If you need a list, I would have to look  
24 them up.

25 Q. Can you recall any others off the top



1 of your head?

2 A. Not specifically, no.

3 Q. You said a lot of those were  
4 certification programs?

5 A. Correct.

6 Q. Do you currently hold all of the --  
7 do you currently hold active certifications in all  
8 of those programs that you took?

9 A. I'm no longer a certified diabetes  
10 educator. That expired. Most of them were so  
11 long ago that I wouldn't consider them -- consider  
12 them active.

13 Q. Were any of the certifications related  
14 to the dispensing or distribution of opioids?

15 A. No.

16 Q. We can look at the first page of the  
17 document, the section marked "Experience." It  
18 says you worked for Albertsons companies for the  
19 past 17 years; is that right?

20 A. That's what it says.

21 I mean, all of the -- to summarize, our  
22 company has gone through a number of mergers and  
23 acquisitions. I've worked for the same company,  
24 essentially, for the last 30 years, 31 years.

25 Q. That same company would be Albertsons?

1           A.     Albertsons and then changed names to  
2     SuperValu and then changed names back to  
3     Albertsons. So it's -- yes.

4           Q.     Okay. And you're currently the  
5     Vice President of Pharmacy Compliance and  
6     Government Affairs; is that right?

7           A.     Correct.

8           Q.     And you've been in that position since  
9     2015?

10          A.     Yes.

11          Q.     That's for Albertsons companies?

12          A.     Yes. We weren't always Albertsons  
13     company in that timeframe, I believe. We were  
14     Albertsons, Inc., or some other variation of  
15     corporate names.

16          Q.     Since 2015, it has always been an  
17     Albertsons company that you've been employed by,  
18     correct?

19          A.     Correct.

20          Q.     And what are the basic responsibilities  
21     you handle in that position?

22          A.     I oversee pharmacy compliance issues,  
23     as well as all of our interactions with government  
24     agencies, boards of pharmacy, legislative  
25     activities for pharmacy.

1           Q.    Have those responsibilities changed in  
2   your position since 2015 at all or have they been  
3   fairly consistent?

4           A.    Fairly consistent.

5           Q.    And who do you currently report to?

6           A.    Anthony Dalponte.

7                   Do you want me to spell it?

8           THE COURT REPORTER:   Sure.

9           THE WITNESS:   D-a-l-p-o-n-t-e.

10          Q.    BY MR. LICHTER:   And do you know his  
11   job title?

12          A.    He's Group Vice President of Pharmacy.

13          Q.    Are there any other Vice Presidents of  
14   Pharmacy Compliance and Government Affairs or are  
15   you the only one?

16          A.    I'm the only one.

17          Q.    And is your position national in  
18   scope or are your responsibilities confined to a  
19   particular geographic area?

20          A.    National in scope.

21          Q.    Have they always been?

22          A.    Yes.

23          Q.    Prior to that position, you were the  
24   Director of Clinical Services from 2006 to 2013,  
25   correct?

1           A.     Yes.

2           Q.     Okay. That was also for Albertsons  
3 companies or an iteration of Albertsons company?

4           A.     Yes, an iteration of Albertsons  
5 companies, yes. SuperValu was in some of that  
6 timeframe.

7           Q.     Okay. And what were the basic  
8 responsibilities you handled in that position?

9           A.     I oversaw the development and  
10 management of all patient care services or  
11 clinical activities, whichever way you would like  
12 to call them. These were activities that are  
13 outside of the normal traditionally dispensing  
14 role of a pharmacist.

15          Q.     Can you give examples of that?

16          A.     Like pharmacists providing  
17 immunizations or performing medication management  
18 services or various disease management programs,  
19 lab tests, things like that.

20          Q.     In your role as Vice President of  
21 Pharmacy Compliance and Government Affairs, do you  
22 have any responsibilities as far as setting the  
23 policies and procedures of Albertsons?

24          A.     I -- yes. I help in the establishment  
25 of the policies and procedures.

1 MR. LICHTER: We can set this one aside.  
2 The next document will be marked as Exhibit 3.

3 (Exhibit 3 marked.)

4 Q. BY MR. LICHTER: Have you seen this  
5 document before?

6 A. I don't recall it, no.

7 Q. Okay. Just looking at the first page,  
8 this appears to be a document entitled, Defendant  
9 Albertsons' Supplemental Objections and Answers to  
10 Plaintiff's Combined Interrogatories To Chain  
11 Pharmacy Defendants, served in this action dated  
12 June 7th, 2023.

13 And you're not sure if you've seen this  
14 document before?

15 A. No.

16 Q. Okay. Go ahead and turn to page 3 of  
17 the document and look at Interrogatory No. 11.

18 That reads: "For each pharmacy or  
19 entity You owned or operated in Tarrant County  
20 from 1996 through the present:"

21 And then it asks for some specific  
22 information for each pharmacy.

23 Do you see that?

24 A. I do.

25 Q. Okay. For the record, I believe we've

1 spoken with your counsel and revised the dates to  
2 span from 2006 to the present.

3 Further down the page in Albertsons'  
4 response to the interrogatory where it says:  
5 "Subject to and without waiving."

6 Do you see that?

7 A. Yes.

8 Q. Okay. Go ahead and read that.

9 "Subject to and without waiving  
10 Albertsons' objections stated in its original  
11 Answer to this Interrogatory, subject to the  
12 parties' subsequent meet and confer discussions,  
13 and based on presently known and reasonably  
14 available information, Albertsons supplements its  
15 original Answer to this Interrogatory and provides  
16 the following updated, complete list of  
17 Albertsons' pharmacies located within  
18 Tarrant County and in operation during the  
19 relevant time period."

20 Do you see that?

21 A. Yes.

22 Q. Okay. And then Albertsons includes a  
23 chart that identifies certain pharmacy banner  
24 names, store numbers, addresses and other  
25 information.

1 Do you see that?

2 A. I do.

3 Q. Does this chart spanning pages 3, 4 and  
4 5 of the document appear to be an accurate list of  
5 the Albertsons pharmacies that have operated in  
6 Tarrant County, Texas, since 2006?

7 A. I don't know.

8 Q. You haven't seen a chart like this  
9 before?

10 A. Not this specific chart, no.

11 Q. I counted here 51 pharmacies in this  
12 chart to be located in Tarrant County that have  
13 been owned -- owned and operated by Albertsons.

14 Does that sound right?

15 MR. DORAN: Objection.

16 THE WITNESS: I don't know if 51 is the  
17 exact number. I can't confirm. But it is not out  
18 of reason.

19 Q. BY MR. LICHTER: You don't have a  
20 different understanding of what that number may  
21 be?

22 A. No.

23 Q. The second column in this chart is  
24 titled "Banner." Is that essentially the brand  
25 name of a particular pharmacy that Albertsons

1 owns?

2 A. Yes.

3 Q. For the 34 banners identified in this  
4 chart as Albertsons, did Albertsons own and  
5 operate those pharmacies since the open date  
6 identified in the second to last column of the  
7 chart?

8 A. I can't confirm, but I have no reason  
9 to say it is not.

10 Q. Okay. You're not aware of any sort  
11 of name changes or banner changes to the  
12 Albertsons banner pharmacies in Tarrant County,  
13 do you?

14 A. I don't know specifically in  
15 Tarrant County. I know that we have changed  
16 banner names over the years from -- just as an  
17 example -- I'm not saying this is -- but Tom Thumb  
18 might change to an Albertsons and Albertsons might  
19 change to a Tom Thumb, as an example, over the  
20 years. So I can't verify, just because I didn't  
21 produce this. I don't know.

22 Q. Okay. So for the 15 banners identified  
23 in this chart as Tom Thumb, you don't know if  
24 Albertsons acquired those from the Safeway merger  
25 in 2015 or if those names have been changed since



1       then?

2               A.     It is possible they've changed since  
3       then.

4               Q.     Okay.  Generally speaking, if a  
5       banner here is designated as a Tom Thumb, could  
6       Albertsons have owned and operated that pharmacy  
7       prior to the merger with Safeway in 2015?

8               MR. DORAN:  Objection.

9               THE WITNESS:  I guess it is possible.

10              Q.     BY MR. LICHTER:  And the two banners  
11       identified in the chart as Market Street, do you  
12       know if Albertsons acquired those from the  
13       United Supermarkets merger in 2013?

14              A.     One of them has an open date of 2018.  
15       That would have been after the merger.  So I can't  
16       confirm that.

17              Q.     The far right column of the chart  
18       identifies the close date for each pharmacy.

19                     Do you see that?

20              A.     Yes.

21              Q.     I counted 32 pharmacies with no close  
22       date.  Does that mean those pharmacies are  
23       currently open, as far as you know?

24              A.     As far as I know.

25              Q.     Okay.  And then 19 pharmacies that have

1 a close date identified. I assume that means  
2 those pharmacies are no longer in operation; is  
3 that right?

4 A. That's how I would interpret it, yes.

5 Q. Okay. Do you know about how many  
6 pharmacies Albertsons currently operates within  
7 the state of Texas? You can give me your best  
8 estimate.

9 A. 150, estimate.

10 Q. You can set this one aside.

11 At certain times, did Albertsons  
12 distribute opioids to its company-owned pharmacies  
13 from its distribution center in Ponca City,  
14 Oklahoma?

15 A. Yes.

16 Q. That includes to its pharmacies located  
17 in Tarrant County, correct?

18 A. Yes.

19 Q. Are you aware that it distributed  
20 opioids from that distribution center between the  
21 years 2006 and 2008?

22 MR. DORAN: Objection.

23 THE WITNESS: Yes, I'm aware.

24 Q. BY MR. LICHTER: Are you aware that  
25 during the 2006 to 2008 timeframe, it distributed

1 Schedule III, IV and V drugs?

2 A. Yes.

3 Q. Are you aware that during 2006 to 2008  
4 timeframe, it did not distribute Schedule II  
5 drugs?

6 A. Yes.

7 Q. Do you know the reason for that?

8 A. I don't.

9 Q. Are you aware that during 2009 to 2012,  
10 Albertsons stopped distributing drugs from its  
11 distribution center altogether?

12 A. Yes.

13 Q. Do you know why it stopped?

14 A. I do not know.

15 Q. Are you aware that from 2013 to 2016,  
16 Albertsons again distributed opioids to its  
17 pharmacies from its Ponca City distribution  
18 center?

19 A. Yes.

20 Q. Do you know why it chose to start  
21 distributing again in 2013?

22 A. No.

23 Q. Are you aware that during the 2013 to  
24 2016 timeframe, it distributed Schedule II, III,  
25 IV and V drugs?

1 A. Yes.

2 Q. Do you know why it chose to distribute  
3 Schedule II drugs during this time?

4 A. I am not.

5 Q. Are you aware that in 2016, Albertsons  
6 again stopped distributing drugs from its  
7 distribution center?

8 A. Yes.

9 Q. Do you know why it stopped?

10 A. No.

11 Q. Are you familiar with Albertsons'  
12 Suspicious Order Monitoring System or SOMS in the  
13 2006 to 2008 timeframe?

14 A. Yes.

15 Q. Are you aware that the Ponca City  
16 distribution center had about 30 selectors at  
17 any given time who had the job of receiving an  
18 order, taking the medication off the shelf and  
19 shipping it out to the pharmacy?

20 A. I'm not aware of the number, but the  
21 overall description sounds fitting.

22 Q. Do you have any reason to dispute the  
23 number of 30?

24 A. No.

25 Q. Okay. And during this time at the

1 warehouse, this is the 2006-2008 timeframe, are  
2 you aware that selectors would use their gut  
3 feeling to determine whether an order did or did  
4 not look right for shipping?

5 A. I know they used their knowledge and  
6 background, familiarity with the stores they were  
7 shipping to. I don't know if that qualifies as a  
8 gut feeling or not, but that's my understanding.

9 Q. Have you ever heard the phrase "gut  
10 feeling" used in the context of Albertsons'  
11 Suspicious Order Monitoring System?

12 A. I read it somewhere.

13 Q. Do you recall where you may have read  
14 it?

15 A. In one of the documents I've seen  
16 recently.

17 Q. Would that be an Albertsons document,  
18 an internal Albertsons document, rather than  
19 something written by counsel?

20 A. I don't know.

21 Q. Okay. Are you aware that the selectors  
22 used what -- what Albertsons previously called a  
23 "common sense approach" to determine which orders  
24 looked suspicious?

25 A. Yes.

1           Q.    Albertsons didn't have any written  
2           criteria or training for the selectors at this  
3           time to help them figure out which orders were  
4           suspicious, correct?

5           MR. DORAN:  Objection.

6           THE WITNESS:  I don't know.

7           Q.    BY MR. LICHTER:  Do you know that if a  
8           selector -- this is still the 2006-2008 timeframe.  
9           If a selector determined an order was unusual, he  
10          would inform his supervisor of that fact?

11          A.    Yes.

12          Q.    And then the supervisor would call the  
13          store to speak with the pharmacist, correct?

14          A.    As I understand it, yes.

15          Q.    And the purpose of that call was only  
16          to confirm the accuracy of the order and ask the  
17          pharmacist if the order was a mistake, correct?

18          MR. DORAN:  Objection.

19          THE WITNESS:  I understood it as the --  
20          to -- to call to understand the reasoning for the  
21          order and why it was felt to be above what they  
22          would have expected.

23          Q.    BY MR. LICHTER:  So you understand  
24          the reasoning for the call to be beyond asking  
25          the pharmacist whether the order was a mistake or

1 not?

2 A. That's how I understood it, yes.

3 Q. And what is your understanding based  
4 on?

5 A. Discussion. And I thought that some of  
6 the documents that I read indicated that that  
7 was -- that the -- I'm trying to -- the -- that  
8 was the overall understanding of -- of the  
9 process. I think -- I'm trying to remember. It  
10 is a lot of material. Yeah, I can't -- I can't  
11 recall specifically, the more I think about it,  
12 where I saw that.

13 Q. Okay. Have you read any prior  
14 deposition transcripts in this case or any other  
15 case related to Albertsons' distribution of  
16 opioids?

17 A. Yes.

18 Q. Whose deposition transcript have you  
19 read?

20 A. David Beck's.

21 Q. Okay. I believe Mr. Beck was deposed  
22 twice. Do you recall if you read his -- his  
23 deposition in his personal capacity or his  
24 deposition as a 30(b)(6) representative of  
25 Albertsons?

1           A.    I think it was a 30(b)(6).  And I  
2    didn't read it completely, just for clarity sake.

3           Q.    Do you recall about how long ago you  
4    read that transcript?

5           A.    Within the last two weeks.

6           Q.    Did you read any other transcripts?

7           A.    I read the -- not for distribution.

8           Q.    How about for dispensing?

9           A.    For dispensing, yes, I read  
10   Jessica Covaci's.

11          Q.    That would be her 30(b)(6), as well?

12          A.    That was a 30(b)(6), yes.

13          Q.    Okay.  And was it your understanding  
14   that the distribution center employees, if they  
15   were told an order was a mistake, they would cut  
16   the order down to what it was intended and ship it  
17   out, in the 2006 to 2008 timeframe?

18          A.    Yes.

19          Q.    And is it your understanding that if  
20   the order wasn't a mistake, that the distribution  
21   center employee would ship that order out in full?

22          MR. DORAN:  Objection.

23          THE WITNESS:  Again, my understanding was  
24   that if they agreed that there was a good reason  
25   for the order to be placed as it was, they shipped



1       it out in full, yes.

2               Q.     BY MR. LICHTER:   And were the orders  
3       that were processed by the distribution center,  
4       were those shipped out the same day they were  
5       received or were they held overnight?

6               MR. DORAN:   Objection.

7               THE WITNESS:   I believe they were held  
8       overnight.

9               Q.     BY MR. LICHTER:   Do you know why they  
10       would have been held overnight rather than shipped  
11       out the same day?

12              A.     I'm not sure.   I thought it was just a  
13       timing issue with logistics.

14              Q.     Albertsons' suspicious order monitoring  
15       policies from 2006 to 2008 were national in scope,  
16       correct?

17              A.     Yes.

18              Q.     Okay.   Those national policies would  
19       have applied to orders received from Albertsons'  
20       Tarrant County stores, correct?

21              A.     Yes.

22              Q.     And at this time, the 2006-2008  
23       timeframe, were there any sort of automatic  
24       process in place that would screen out or reject  
25       or cut any orders before they were filled at the

1 warehouse?

2 A. Yes.

3 Q. Okay. Can you explain how that process  
4 worked?

5 A. So it was on the distribution -- the  
6 dispensing software had certain limits put in  
7 there for each -- for each location. And if the  
8 order was above that, it automatically cut it down  
9 to the maximum, whatever that limit was. So  
10 before it went to Ponca and -- got sent to Ponca,  
11 it would go through that first screening and cut  
12 back.

13 Q. And that was an automated process?

14 A. Yes.

15 Q. Okay. Was that also in place between  
16 2013 and 2016?

17 A. Yes.

18 Q. So if the automated process would  
19 screen out orders above a certain threshold before  
20 they reached the distribution center, what would  
21 the distribution center selectors or employees be  
22 looking for when they were filling those orders?

23 A. They --

24 MR. DORAN: Objection.

25 THE WITNESS: My understanding is they would

1 look for orders that were, again, based on their  
2 experience and knowledge of the stores outside of  
3 a normal size order.

4 Q. BY MR. LICHTER: So selector -- even  
5 though there was an automated screening process  
6 prior to an order reaching the distribution  
7 center, the distribution center employees would  
8 still encounter orders that were excessive?

9 MR. DORAN: Objection.

10 THE WITNESS: Orders that were higher than  
11 what they would consider average, yes, or normal,  
12 yes.

13 Q. BY MR. LICHTER: Okay. And for the  
14 orders that were automatically screened, you said  
15 if an order exceeded a certain threshold it was --  
16 was it rejected in the system and not filled at  
17 all?

18 A. You're talking about the automated --

19 Q. The automated system?

20 A. -- component?

21 I believe it was cut back to the  
22 maximum. I don't think it was rejected.

23 Q. Okay. Do you know if those orders that  
24 were automatically cut down to that maximum  
25 amount, do you know if anybody investigated those

1 orders one way or another?

2 A. I don't know from -- from that specific  
3 action. I know of -- I know -- well, we're  
4 talking about 2006 to 2008 still?

5 Q. Yeah.

6 A. I don't know if anyone did.

7 Q. Are you aware of any other components  
8 of Albertsons' Suspicious Order Monitoring System  
9 for the 2006 to 2008 timeframe we didn't talk  
10 about yet?

11 A. I think we talked about that.

12 No.

13 Q. Okay. All right. Moving on to the  
14 2013 to 2016 timeframe. Are you familiar with  
15 Albertsons' suspicious order monitoring between  
16 2013 and 2016?

17 A. Yes.

18 Q. Okay. During this time, Albertsons  
19 pharmacies throughout the country were submitting  
20 their Schedule II orders to Ponca City via hard  
21 copy forms in the mail, correct? I think they are  
22 called Form 222's?

23 MR. DORAN: Objection.

24 THE WITNESS: For most of the time period,  
25 yes.

1 Q. BY MR. LICHTER: Okay. Do you recall  
2 if that practice stopped at any certain point?

3 A. When stores would move over to CSOS,  
4 the electronic processing, they would not  
5 necessarily 100 percent stop. There could still  
6 be a reason for a 222. But for the most part, the  
7 stores would use CSOS instead.

8 Q. When you say CSOS, that's C-S-O-S, the  
9 Controlled Substance --

10 A. Ordering System.

11 Q. -- Ordering System?

12 A. Yes.

13 Q. And there wasn't a certain time where  
14 all of the pharmacies ported over to CSOS? They  
15 all kind of do it on kind of an ad hoc basis?

16 A. I wouldn't say it is ad hoc. But I  
17 think it was a rollout. So it wasn't like an  
18 overnight switch.

19 Q. So by, I guess, 2016, when Albertsons  
20 stopped distributing, were there any -- were there  
21 any pharmacies continuing to submit Schedule II  
22 orders via hard copy form in 2016, or were they  
23 all on CSOS at some point?

24 A. I don't believe they were all on CSOS.

25 Q. Okay. You said for 2013 to 2016, there

1 was -- there was an automated process in place,  
2 just like in 2006 to 2008, that screened out  
3 certain excessive orders; is that right?

4 A. The preliminary cut, yes.

5 Q. And were the -- the Form 222's  
6 processed in that preliminary cut step?

7 A. They would not have been part of that  
8 preliminary cut.

9 Q. Okay. Also during this 2013 to 2016  
10 timeframe, electronic orders submitted to the  
11 distribute -- the distribution center were also  
12 added to a spreadsheet to track the prior 10 to  
13 12 orders that the pharmacy submitted; is that  
14 right?

15 MR. DORAN: Objection.

16 THE WITNESS: Could you repeat that? I'm  
17 sorry.

18 Q. BY MR. LICHTER: Sure.

19 During this 2013 to 2016 timeframe,  
20 electronic orders submitted to the distribution  
21 center were added in a spreadsheet to track the  
22 average prior orders of those -- those pharmacies  
23 submitted; is that right?

24 A. That's my understanding. Something  
25 similar to that, yes.

1           Q.    Okay.  Do you know if this was called  
2   an above threshold report?

3           A.    It sounds familiar.

4           Q.    Okay.  Do you know if the orders that  
5   were cut by the preliminary screening process,  
6   do you know if they were included in this above  
7   threshold report spreadsheet?

8           A.    I don't believe they should have been.  
9   I'm not 100 percent sure.

10          Q.    Okay.

11          MR. DORAN:  I'll just interject that a lot  
12   of these questions are sort of going beyond sort  
13   of the agreed scope of what he would be prepared  
14   to talk about.  So, you know, I think a lot of  
15   these questions and answers are sort of provided,  
16   really, in his individual basis, just given the  
17   kind of limitation and the scope on what he was  
18   prepared here to talk about today.  So I just want  
19   to put that on the record.

20          Q.    BY MR. LICHTER:  Okay.  Do you  
21   recall -- in the context of the spreadsheet that  
22   the distribution center employees had in 2013 to  
23   2016, do you recall that they would call the  
24   pharmacy in the event an order exceeded a certain  
25   threshold?

1           A.     Yes.

2           Q.     Okay.  And do you know if the purpose  
3     of that call was to confirm the accuracy of the  
4     order and ask the pharmacist if it was a mistake?

5           A.     Similar, my understanding is that they  
6     were calling to identify the reason for the order,  
7     so that they could judge if it was appropriate or  
8     not.

9           Q.     And the distribution center employee  
10    making the call would document any information the  
11    pharmacist gave as to why the order may have been  
12    unusual; is that right?

13          A.     They documented some information.  I  
14    don't know if it is any information.

15          Q.     Do you know what they were supposed to  
16    document?

17          A.     I don't specifically know the  
18    directions provided to them, no.

19          Q.     Are you aware that unless the order  
20    was -- unless the pharmacist confirmed the order  
21    was a mistake, that the orders would be shipped in  
22    full?

23          A.     No.  I -- I'm not aware.  So I'm not  
24    sure, no.

25          Q.     Do you have a different understanding



1 of that?

2 A. My understanding was that they were  
3 evaluating the purpose of the order -- or the  
4 reason for the larger order, and, again, making a  
5 decision on whether to ship or not.

6 Q. Okay. And in 2013 to 2016, the orders  
7 were also held overnight and sent the next day for  
8 logistical reasons?

9 A. That's my understanding, yes.

10 Q. And the 2013 to 2016 distribution  
11 policies, SOMS policies, were also national in  
12 scope, right?

13 A. Yes.

14 MR. DORAN: Objection. Sorry.

15 Q. BY MR. LICHTER: Those would have also  
16 applied to orders received from Albertsons'  
17 Tarrant County stores; is that right?

18 A. Yes.

19 Q. Okay. And talking about the automated  
20 screening process prior to an order reaching the  
21 distribution center, were -- were those orders  
22 that were cut down investigated by anyone at  
23 Albertsons?

24 A. I don't recall.

25 Q. And in all of the time that Albertsons

1       was distributing opioids to its pharmacies, it  
2       never identified a single order as suspicious,  
3       correct?

4               MR. DORAN:  Objection.

5               THE WITNESS:  As I understand it, yes.

6               Q.     BY MR. LICHTER:  And in all of the  
7       time Albertsons was distributing opioids to its  
8       pharmacies, it never reported a single order to  
9       the DEA, correct?

10              MR. DORAN:  Objection.

11              THE WITNESS:  As I understand it, yes.

12              MR. LICHTER:  Okay.  If we can -- this is  
13       where we're going to use the spreadsheet.  If we  
14       can hop off the record for a couple minutes, so we  
15       can figure out the logistics.

16              THE VIDEOGRAPHER:  The time is 10:54 a.m.  
17       Off the record.

18              (Recess taken.)

19              THE VIDEOGRAPHER:  The time is 11:04 a.m.  
20       On the record.

21              MR. LICHTER:  Okay.  We'll have the next  
22       document marked as Exhibit 4.

23              (Exhibit 4 marked.)

24              Q.     BY MR. LICHTER:  Mr. Provenzano --

25              MR. LICHTER:  For the record, this slip

1 sheet is Bates labeled ALB-MALCT9-00000028.

2 Q. BY MR. LICHTER: And, Mr. Provenzano,  
3 for the record, I've handed you a slip sheet of a  
4 document we're going to look at. And the slip  
5 sheet identifies a spreadsheet produced by  
6 Albertsons that contains thousands of lines of  
7 data. So to the extent we need to refer to the  
8 spreadsheet itself, you can see the actual  
9 spreadsheet on the screen in front of you. I  
10 didn't actually print out the hundreds of pages of  
11 the spreadsheet itself today.

12 Does that all make sense?

13 A. Yes.

14 Q. Okay. Do you see the spreadsheet now?

15 A. Yes.

16 Q. Okay. Have you seen this spreadsheet  
17 before?

18 A. Yes.

19 Q. Okay. In discovery, your counsel  
20 indicated the spreadsheet represents Albertsons'  
21 above-threshold reports and available opioid  
22 distribution data from the Ponca City distribution  
23 center to Albertsons company-owned pharmacies  
24 located in Tarrant County.

25 Does that seem accurate to you?

1           A.     Yes.

2           Q.     Okay.  And are you aware that the data  
3     in the spreadsheet only covers August 2013 to  
4     June 2016?

5           A.     Yes.

6           Q.     Okay.  Do you know whether any similar  
7     data is available for the 2006 to 2008 timeframe?

8           A.     I don't know.

9           Q.     In looking at the spreadsheet, each row  
10    represents an order that the Ponca City  
11    distribution center received from one of its  
12    pharmacies in Tarrant County; is that right?

13          A.     Yes.

14          MR. LICHTER:  And I'll ask the tech to  
15    scroll all the way down to the bottom, so we can  
16    see the total number of Tarrant County orders we  
17    have on the spreadsheet for there.

18          Q.     BY MR. LICHTER:  I think the last row  
19    with information on it is row 20,468.

20                 Do you see that?

21          A.     Yes.

22          MR. DORAN:  I'll just -- I don't know  
23    offhand if the spreadsheet includes just  
24    Tarrant County stores or all of Texas, because we  
25    ended up producing a supplement.  I just don't

1 know offhand if this is just Tarrant County stores  
2 or all of the Texas stores.

3 MR. LICHTER: Your supplement, was that an  
4 overlay of the -- the single document or was it an  
5 additional document?

6 MR. DORAN: I can't recall.

7 Q. BY MR. LICHTER: So anyway, on the  
8 spreadsheet, we're looking at about 20,500 orders,  
9 is that right, approximately?

10 A. Yes.

11 Q. And scrolling all the way back to the  
12 top, Column A is date.

13 Just so I know I'm reading this  
14 correctly, the date of the first order would be  
15 07 -- sorry -- 08/07/13 or August 7, 2013; is that  
16 right?

17 A. Yes.

18 Q. Okay. Do you know what the remainder  
19 of that number identifies?

20 A. I believe it is -- I thought it was a  
21 store number. But, no, I'm not sure. I'm sorry.

22 Q. Okay. Column B is actually the store  
23 number?

24 A. Column B is store number.

25 Q. Okay. That's the Albertsons pharmacy,

1 I think, in Tarrant County. But I think your  
2 counsel expressed it might be all of Texas. But  
3 the store number of the Albertsons pharmacy,  
4 either in Texas or Tarrant County, that submitted  
5 the order to the distribution center; is that  
6 right?

7 A. Yes.

8 Q. And Column E is the item description.  
9 That's the name and strength of the medication of  
10 the -- that the pharmacy ordered, correct?

11 A. Yes.

12 Q. Column F and G both say comments. One  
13 says comments and one says comments 2.

14 Do you see that?

15 A. Yes.

16 Q. And these contain any documentation  
17 the DC employee made regarding his or her  
18 conversation with the pharmacy about the order,  
19 correct?

20 A. Yes.

21 Q. Okay. And Column H is item size. And  
22 that's the amount of pills in each bottle ordered;  
23 is that right?

24 A. Yes.

25 Q. Column K is quantity ordered. That's

1 the number of bottles the pharmacy ordered; is  
2 that right?

3 A. Yes.

4 Q. Okay. Column L is AVG QTY. I think  
5 that stands for average quantity.

6 Is that your understanding?

7 A. Yes.

8 Q. That's the average of the prior 10 to  
9 12 orders of that medication from that ordering  
10 pharmacy; is that right?

11 A. Yes, I believe so.

12 Q. Okay. Looking at Column P is exception  
13 reason. And that's the reason each order made it  
14 onto the spreadsheet in the first place; is that  
15 right?

16 A. Yes, I believe so.

17 Q. Okay. If we can click on the drop-down  
18 menu for this column to take a look at the  
19 different exception reasons used in the  
20 spreadsheet. Hopefully we can all see that.

21 The first one is new NDC ordered.

22 Do you see that?

23 A. Yes.

24 Q. Do you know what that means?

25 A. New product that the store hadn't had

1 before.

2 Q. That's the reason the order would have  
3 made it on the spreadsheet?

4 A. Yeah. Since it had no history -- it  
5 had a history of zero, anything over zero is going  
6 to be a -- would make it look like a larger than  
7 usual order.

8 Q. The next one is no set average for  
9 store.

10 Do you see that?

11 A. Yes.

12 Q. And what does that mean?

13 A. For some reason, the store doesn't have  
14 an average established. I don't know why. I  
15 don't have specifics on that one, no.

16 Q. Okay. Do you know if the orders -- if  
17 these orders were still shipped in full, if there  
18 were no set average for the stores for a  
19 particular order?

20 A. I don't know for sure, but I believe  
21 they would be.

22 Q. Okay. And do you know if the Ponca  
23 employee called the store if the store had no set  
24 average for a particular store?

25 A. I don't know.



1           Q.    Are you aware that there are no call  
2    notes on the spreadsheets, no comments included  
3    for orders coded as no set average for store?

4           A.    I am not.

5           Q.    Okay. All right. Next down is order  
6    quantity greater than 20 percent of store average.

7                   Does that mean that the quantity of  
8    medication being ordered exceeded 20 percent of  
9    the prior average for that store's order?

10          A.    Yes.

11          Q.    Okay. Below that is order quantity  
12   greater than store average plus SOM.

13                   Do you know what that means?

14                   So looking down, again, at the  
15   drop-down box for the list of reasons --

16          A.    Yeah. The drop-down disappeared, but  
17   I'm trying to read it so I can -- can I see an  
18   example again? Can someone drop it back down  
19   again?

20                   Thank you.

21          Q.    Order quantity greater than average  
22   plus SOM.

23                   Do you know what that means?

24          A.    I don't.

25          Q.    The next one, subs to new NDC, do you

1 know what that means?

2 A. That would mean a substitute from an  
3 old NDC that either, for some reason, can't be  
4 obtained to a different NDC. So -- so same  
5 strength product, same drug, just a different  
6 manufacturer.

7 Q. Okay. The next one down, sub to new  
8 NDC no set average.

9 Do you know what that means?

10 A. Well, the first part of it, as I  
11 described. The last part of it, I wasn't -- I'm  
12 not sure what no set average means. But whatever  
13 it means, my -- my understanding would be that  
14 for some reason, there's no average for that item.

15 Q. Okay.

16 A. Or for that store, I should say.

17 Q. Okay. And then the last one, sub to  
18 new NDC greater than 20 percent of store average.

19 Does that mean that new NDC for the  
20 medication can't -- it also exceeded 20 percent?

21 A. It also exceeded 20 percent of the  
22 average, yes.

23 Q. Okay. Looking at Column Q --

24 A. Okay.

25 MR. LICHTER: You can exit that drop down

1 menu and look at Column Q.

2 Q. BY MR. LICHTER: That's bottles over.  
3 That's the number of bottles in the current order  
4 that exceeds the prior average of that medication;  
5 is that right?

6 A. Yes.

7 Q. Okay. Column R says percent over.  
8 That's the percent the current order exceeds the  
9 prior average of that medication; is that right?

10 A. Yes.

11 Q. Okay. And generally speaking, if  
12 there's no comment in the comment field, does that  
13 mean there was no phone call from the distribution  
14 center to the pharmacy?

15 MR. DORAN: Objection.

16 THE WITNESS: In which field? I'm sorry.

17 Q. BY MR. LICHTER: The comments field.

18 A. Yes, as I understand it.

19 Q. Okay. Are you aware that only 164  
20 of the approximately 20,500 orders have any  
21 information listed in the comment field here?

22 A. I'm sorry. Can I go -- go back to the  
23 question? I didn't -- I was rethinking.

24 So you're asking again -- can you  
25 repeat that question?

1 Q. Sure.

2 If -- if there's no comment in the  
3 comment field, if the comment fields here are  
4 blank --

5 A. Blank, okay.

6 Q. If Columns F and G, if those are blank,  
7 does that mean there was no phone call from the  
8 distribution center to the pharmacy?

9 MR. DORAN: Objection.

10 THE WITNESS: I don't think so. That's not  
11 my understanding.

12 Q. BY MR. LICHTER: What is your  
13 understanding?

14 A. There's no documentation on it. It  
15 doesn't tell me why.

16 Q. Okay. But it is your understanding  
17 that if the distribution center did call a  
18 pharmacy, they would document their notes from the  
19 conversation in Column F or G, correct?

20 A. That's what I would -- that's what  
21 should happen, yes.

22 Q. Okay. Other than the -- the calls  
23 noted in the spreadsheet, are you aware of any  
24 other due diligence steps Albertsons took for any  
25 of these orders before the orders were shipped to

1 pharmacies?

2 MR. DORAN: Objection.

3 THE WITNESS: Before they were shipped to  
4 pharmacies? Timing on it is a little tricky. I  
5 know that the -- the information was shared with  
6 the compliance group afterwards. But I don't know  
7 if I could say that it happened before or after it  
8 was shipped to the pharmacy.

9 Q. BY MR. LICHTER: So you don't know if  
10 the information was shipped to compliance before  
11 or after the order was shipped?

12 MR. DORAN: Objection; form.

13 THE WITNESS: My understanding, I believe  
14 it was sent the same day as the order was -- as  
15 the calls would have been made. So it should have  
16 gone out before the order was shipped.

17 Q. BY MR. LICHTER: Sorry. What should  
18 have gone out?

19 A. The -- the spreadsheet should have been  
20 sent to the compliance, I believe.

21 Q. Before the order was shipped?

22 A. I think, yes.

23 Q. And was it your understanding that  
24 orders would be held by Albertsons pending a  
25 response from the -- I believe you said it was the

1 compliance department?

2 A. Yes.

3 Q. They would be held?

4 A. No. The compliance department used  
5 this for -- kind of as -- as part of an overall  
6 compliance process where they were looking at the  
7 overall distribution -- not distribution, but also  
8 dispensing of the pharmacy to see if there was  
9 any -- anything that was popping up on this issue  
10 that might make them want to look at a store  
11 closer from dispensing purposes, not necessarily  
12 from the order process, as I understand it.

13 Q. So regardless of what happened after  
14 the information was sent to compliance, the order  
15 would still be shipped out, correct?

16 A. My understanding, yes.

17 MR. LICHTER: Okay. I'll have the next  
18 document marked as Exhibit 5.

19 MR. DORAN: Are you still --

20 Q. BY MR. LICHTER: Well, so Exhibit 5 is  
21 kind of an excerpt of the spreadsheet. So it may  
22 be helpful to refer back and forth. But for now,  
23 we can look at the new exhibit. And if you need  
24 to look back to the spreadsheet, you can let me  
25 know and we can make that work.

1           A.     Thanks.

2           (Exhibit 5 marked.)

3           MR. DORAN:   We'll leave -- why don't we --  
4     if you're going to refer back, just -- he'll -- he  
5     has the hard copy of Exhibit 5 in front of him.  
6     If you need to refer back to Exhibit 4, obviously  
7     that needs to be put back on the screen.

8           Q.     BY MR. LICHTER:   That's fine.   Okay.  
9     So we'll be looking at Exhibit 5 right now.   If  
10    you would like to look back at the spreadsheet,  
11    let us know and we'll put that up.

12                   Is that okay?

13           A.     Yes.

14           Q.     Okay.   So I wanted to look at a few of  
15    the specific orders that were in the spreadsheet  
16    that we were just looking at.   I will represent to  
17    you that I created this chart in Exhibit 5 by  
18    copying information from the 11 columns in the  
19    spreadsheet that we just looked at for a few  
20    specific orders.

21                   Does that make sense?

22           A.     Yes.

23           MR. DORAN:   And I'll just object to the  
24    extent that this is obviously just an excerpt of  
25    some of the columns, but not all of the columns.

1 MR. LICHTER: Sure.

2 Q. BY MR. LICHTER: So the far left column  
3 here in the document we're looking at says row.

4 Do you see that?

5 A. Yes.

6 Q. Okay. And that refers to the row in  
7 the Excel spreadsheet that we looked at. So I  
8 would like us to look at the information marked  
9 for row 4965.

10 Do you see where that is? I think it  
11 is three down in this chart.

12 A. I do, yes.

13 Q. Okay. According to the information  
14 here in this chart, on February 15th, 2015,  
15 Tarrant County Store No. 560 ordered 25 100-count  
16 bottles of hydrocodone, which was 138 percent over  
17 their prior average.

18 Do you see that?

19 A. I do.

20 Q. Okay. Are you aware that store 560 is  
21 located in Colleyville, Texas?

22 A. I am not. But I -- I assume that's  
23 accurate.

24 Q. Okay. I'll represent that it is  
25 located in Colleyville, Texas.



1                   The comment included with this order  
2       says: "Used 3400 last week."

3                   Do you see that?

4           A.     Yes.

5           Q.     So that means a distribution center  
6       employee saw the order, called the pharmacy, and  
7       the pharmacist told him the reason the order is  
8       high is that Store No. 560 dispensed 3,400 of  
9       these pills last week alone; is that right?

10          MR. DORAN:  Objection.

11          THE WITNESS:  That's what the person  
12       documented based on the conversation with the  
13       pharmacist, yes.

14          Q.     BY MR. LICHTER:  Right.  Okay.

15                   And based on this comment, "used 3400  
16       last week," was filling this order in full a  
17       violation of Albertsons' policies or was it  
18       compliant with them?

19          MR. DORAN:  Objection.

20          THE WITNESS:  It -- I can't answer that  
21       without knowing more about the conversation that  
22       was held.  So I don't know.

23          Q.     BY MR. LICHTER:  Okay.  But that's the  
24       only information of the conversation that is  
25       documented here, right?

1 A. Correct.

2 Q. Okay.

3 A. It is.

4 Q. If we can look at row 6066.

5 Are you there?

6 A. I am.

7 Q. Okay. And the information here  
8 indicates that on April 23rd, 2015, Tarrant County  
9 Store No. 4267 ordered eight 100-count bottles of  
10 hydrocodone, which was at 175 percent over their  
11 prior average.

12 Do you see that?

13 A. Yes.

14 Q. I'll represent that Store 4267 is  
15 located in Watauga, Texas.

16 Do you have any understanding to the  
17 contrary?

18 A. No.

19 Q. Okay. The comment says: "new pt."

20 Do you see that?

21 A. Yes.

22 Q. And PT is generally shorthand for  
23 patient, correct?

24 A. Correct.

25 Q. Okay. So here, the reason for ordering

1 175 percent over the prior average of the store is  
2 that one new patient presented a prescription  
3 for -- at this store, correct?

4 MR. DORAN: Objection.

5 Q. BY MR. LICHTER: Based on the  
6 information here?

7 A. I can't confirm that. It could be --  
8 the new patient could be -- an abbreviation for  
9 patient. It might be multiple patients or it  
10 could be one patient. I don't know for sure.

11 Q. Okay. So based on the information  
12 here, you wouldn't be able to say whether filling  
13 this order in full would violate Albertsons'  
14 policies?

15 MR. DORAN: Objection.

16 THE WITNESS: No.

17 MR. DORAN: Vague and ambiguous. There's no  
18 foundation.

19 THE WITNESS: Correct. There -- I couldn't  
20 say because there's not enough information to make  
21 that judgment -- to make that judgement from this  
22 information on the sheet.

23 Q. BY MR. LICHTER: Okay. If you can look  
24 at row 6192.

25 According to the information here, on

1 June 22, 2015, Tarrant County Store 4124 ordered  
2 seven 100-count bottles of hydromorphone, which  
3 was 169 percent over their prior average.

4 Do you see that?

5 A. Yes.

6 Q. Okay. I'll represent that Store 4124  
7 is located in Fort Worth, Texas.

8 Do you have any understanding to the  
9 contrary?

10 A. No.

11 Q. Okay. And the comment says: "A new pt  
12 script, upt order."

13 Do you see that?

14 A. Yes.

15 Q. Okay. So according to the comments  
16 here, the reason the store ordered 169 percent  
17 over the prior average is that the store had one  
18 new patient with one new prescription, correct?

19 A. Yes. Yes. I would define that -- I  
20 would interpret that a new -- a new patient  
21 script.

22 Q. You interpret that as one new patient  
23 prescription, correct?

24 A. Yes. Not meaning that the quantities  
25 were that prescription specifically, but yes.

1           Q.    Okay.  Based on this comment, do you  
2    have any opinion as to whether filling this order  
3    in full complied with Albertsons' policies?

4           MR. DORAN:  Objection.

5           THE WITNESS:  No.

6           Q.    BY MR. LICHTER:  Okay.  Row 7953,  
7    according to that information, on September 3rd,  
8    2015, Tarrant County Store 4242 ordered ten  
9    100-count bottles of hydromorphone, which was  
10   203 percent over the prior average.

11                   Do you see that?

12           A.    Yes.

13           Q.    I'll represent Store 4242 is located in  
14   Arlington, Texas.  Do you have any reason to  
15   dispute that?

16           A.    No.

17           Q.    The comment here says:  "2 pts get 500  
18   per month."

19                   Do you see that?

20           A.    Yes.

21           Q.    So according to the -- the comment  
22   here, the reason this store ordered 203 percent  
23   over the prior average is that two patients were  
24   receiving 500 hydromorphone pills per month,  
25   correct?

1 MR. DORAN: Objection.

2 THE WITNESS: From what I read, yes.

3 Q. BY MR. LICHTER: Based on the  
4 documentation that is indicated here, you have no  
5 idea whether or not filling this order would have  
6 complied with Albertsons' policies, correct?

7 MR. DORAN: Objection.

8 THE WITNESS: Correct. Because you don't  
9 know anything about the therapy of the patient,  
10 correct.

11 Q. BY MR. LICHTER: Right.

12 In row 10692 on the second page of the  
13 document.

14 A. Yes.

15 Q. Let me know when you're there.

16 A. I'm here.

17 Q. According to the information here, on  
18 June 19th, 2016, Tarrant County Store No. 560  
19 ordered 44 500-count bottles of Tramadol, which  
20 was 2,833 percent over the prior average.

21 Do you see that?

22 A. I do.

23 Q. Okay. And I think we previously  
24 identified Store No. 560 as located in  
25 Colleyville, Texas.

1 Any understanding to the contrary?

2 A. No.

3 Q. Okay. And the comment says:

4 "Increased in to stores."

5 Do you see that?

6 A. Yes.

7 Q. Do you have any idea what that means?

8 A. This was around the time that the --  
9 the Ponca facility was getting out of  
10 distribution. So they were distributing their  
11 product to the stores -- to basically get all of  
12 the product out of Ponca and into -- into the  
13 pharmacies because they were going out of  
14 business -- out of the business.

15 Q. So if I understand that right, when  
16 Ponca was winding down its distribution process  
17 from the Ponca City warehouse, in order to get rid  
18 of the medications on the shelves, it would -- I  
19 think it referred to it as pushing out the  
20 medications to its pharmacies; is that right?

21 A. That's correct.

22 Q. Okay. That would have included  
23 pharmacies located in Tarrant County?

24 A. Yes.

25 Q. And it appears here, for this

1 particular order we're looking at, that the store  
2 received 2,833 percent over its prior average  
3 based on that push of that medication to the  
4 Albertsons stores?

5 A. That's correct.

6 Q. Okay. Looking at row 19026. On  
7 September 24, 2014, Tarrant County Store 4290  
8 ordered ten 500-count bottles of hydrocodone,  
9 which was 333 percent over the prior average.

10 Do you see that?

11 A. Yes.

12 Q. I'll represent Store 4290 is located in  
13 Azle, Texas.

14 Any reason to dispute that?

15 A. No.

16 Q. That's A-z-l-e, Texas.

17 The comment says: "Getting pts from  
18 wal mart and CVS."

19 Do you see that?

20 A. I do.

21 Q. Okay. Based on the limited information  
22 here, does that mean that patients originally  
23 presenting prescriptions at Walmart and CVS were  
24 now going over to Albertsons Store 4290 to get  
25 them filled?



1 A. Yes.

2 Q. Okay. And that's the reason for the  
3 333 percent increase over the store's prior  
4 average?

5 A. Yes.

6 MR. DORAN: Objection.

7 Q. BY MR. LICHTER: No idea, based on  
8 these comments, whether filling those orders would  
9 have been a violation of Albertsons' policies?

10 MR. DORAN: Objection.

11 THE WITNESS: No.

12 Q. BY MR. LICHTER: Looking at row 20086,  
13 on November 30, 2014.

14 A. Um-hum.

15 Q. Tarrant County Store 560 ordered 15  
16 100-count bottles of Oxycodone --

17 THE COURT REPORTER: I'm sorry. Store 560  
18 ordered --

19 Q. BY MR. LICHTER: 15 100-count bottles  
20 of Oxycodone, which was 196 percent over the prior  
21 average.

22 Do you see that?

23 A. I do.

24 Q. Okay. And I think we previously  
25 identified Store 560 as located in Colleyville,

1 Texas.

2 The comment says: "This is usually  
3 what they get."

4 Do you see that?

5 A. I do.

6 Q. Okay. But looking at the other  
7 information in this chart, we know that's not  
8 actually true, correct?

9 MR. DORAN: Objection.

10 Q. BY MR. LICHTER: Because they exceeded  
11 their threshold -- or exceeded the prior average,  
12 I should say?

13 A. I -- the only thing I can say is I  
14 don't know if this is maybe an NDC switch to a  
15 different NDC, but I can't tell from this. And  
16 that maybe has something to do with the -- with  
17 the discrepancy in why that comment is made.  
18 Perhaps they got the same product with a different  
19 NDC. And now that it is on a different NDC, it is  
20 higher than that NDC was normally at. But I'm not  
21 sure. That's my best --

22 Q. BY MR. LICHTER: Okay. But there's no  
23 indication that there was a switch in NDC based on  
24 the comments included in the -- by the DC  
25 employee?

1           A.     That's correct.

2           Q.     The DC employee only documented from  
3     the conversation with the pharmacy that this is  
4     usually what they get, correct?

5           A.     That's correct.

6           Q.     Even though, based on the data here,  
7     that the order was 196 percent over that store's  
8     prior average for that order, correct?

9           A.     Correct.

10          Q.     Okay. In looking at the rest of the  
11     comments on this chart, the comments noted in this  
12     chart appear to you to be appropriate  
13     justifications for shipping excessive opioid  
14     orders into Tarrant County?

15          MR. DORAN: Objection; no foundation.

16          THE WITNESS: They're -- summary comments  
17     are -- are hard to discern what really happened  
18     in the conversation. So they are not -- they are  
19     not complete comments to truly describe what  
20     happened in the conversation, or not ideal anyway.

21          Q.     BY MR. LICHTER: Do any of the comments  
22     jump out at you as being problematic or not  
23     sufficient to justify shipping an order in full?

24          MR. DORAN: Objection; no foundation.

25          THE WITNESS: I can't judge it just by

1 the comments because I don't know what the  
2 conversation was. And so far, it is hard to --  
3 it is -- it is not possible to tell if after the  
4 conversation, the person decided that it was  
5 appropriate or not.

6 Q. BY MR. LICHTER: Okay. Do you know if  
7 Albertsons ever identified any orders from its  
8 Tarrant County pharmacies as suspicious?

9 A. I don't.

10 Q. You're not aware of any?

11 A. No.

12 Q. And do you know if Albertsons ever  
13 canceled, rejected or refused to ship an order  
14 from its Tarrant County pharmacy on the grounds  
15 that it was suspicious?

16 A. No.

17 Q. No, you don't know, or no, you're not  
18 aware of any?

19 A. No, I'm not aware of any.

20 Q. Okay. And did Albertsons ever report  
21 any orders from its Tarrant County pharmacies to  
22 the DEA?

23 A. I don't believe so.

24 MR. LICHTER: Okay. You can set that one  
25 aside.

1 I'll have the next document marked as  
2 Exhibit 6.

3 (Exhibit 6 marked.)

4 MR. DORAN: Are we done with the --

5 MR. LICHTER: We're done with the  
6 spreadsheet, yes.

7 MR. DORAN: I'll take my computer back.

8 MR. LICHTER: For the record, this document  
9 is Bates numbered ALB-MDLCT9-00386118.

10 Q. BY MR. LICHTER: Have you seen this  
11 document before?

12 A. Yes.

13 Q. When is the last time you saw it?

14 A. I think within the last couple of  
15 weeks.

16 Q. Okay. Is this a copy of Albertsons'  
17 annual controlled substance training PowerPoint?

18 A. It is. I'm not sure the version or the  
19 year of it. But, yes, it is -- it is one of the  
20 versions.

21 Q. Okay. I'll represent to you that  
22 the -- the metadata for this document identified a  
23 document date of September 12th, 2018.

24 A. Thank you.

25 Q. Any reason to believe this document may

1 be from a different time or a different year?

2 A. No.

3 Q. This appears to be a copy of controlled  
4 substance training that Albertsons used in 2018?

5 A. Yes.

6 Q. Just flipping through the document now,  
7 it looks like each -- each page has a slide at the  
8 top followed by speaker notes beneath each slide;  
9 is that right?

10 A. Yes.

11 Q. Do you know who typically conducts this  
12 training?

13 MR. DORAN: Objection.

14 THE WITNESS: 2018? This could have been --  
15 if it was done initially -- the short answer is,  
16 I'm not sure. But it could have been done by a  
17 live trainer or this could have been an online  
18 program. I don't know which way we were doing  
19 this in 2018.

20 Q. BY MR. LICHTER: If it was done by a  
21 live trainer, do you know what the title of the  
22 person would have been?

23 A. No.

24 Q. No?

25 Do you know who would have been

1 receiving this training?

2 A. Pharmacists.

3 Q. Would that have included Albertsons  
4 pharmacists located in Tarrant County, Texas?

5 A. Yes.

6 Q. This would have been nationwide  
7 training?

8 A. Yes.

9 Q. Obviously, the title of the first  
10 slide on the document indicates this is an annual  
11 training. So does that mean this was -- this  
12 training was conducted once a year?

13 A. Correct.

14 Q. Do you know when Albertsons first began  
15 giving this annual controlled substance training?

16 A. It was probably around 2017, 2018.  
17 This might be the version for that.

18 Q. Okay. Was Albertsons providing  
19 controlled substance training to its pharmacists  
20 prior to 2017, 2018?

21 A. In different formats, part of policies  
22 and procedures training and communication that  
23 went out that way. This was a more formalized  
24 process as we were developing our programs, kind  
25 of as part of our continued quality assurance and

1 improvement processes, we were always tweaking and  
2 modifying. And this was -- this was a more  
3 formalized process.

4 Q. So prior to, I guess, 2017, 2018, other  
5 than the actual written policies and procedures  
6 that Albertsons provided to its pharmacists, do  
7 you know what sort of format controlled substance  
8 training took prior to that year?

9 A. I don't recall.

10 Q. Okay. And in 2017, 2018, when this  
11 training was used, were there multiple types of  
12 controlled substance training given throughout the  
13 year or did this training generally encompass  
14 everything in this PowerPoint?

15 A. Could you repeat that?

16 Q. Sure.

17 Were there, I guess, other multiple  
18 types of controlled substance training that  
19 Albertsons gives throughout the year, or is  
20 the controlled substance training generally  
21 encompassed in this document -- in this  
22 PowerPoint?

23 MR. DORAN: Objection.

24 THE WITNESS: There are multiple trainings.  
25 You're talking about 2017, 2018 specifically?



1           Q.    BY MR. LICHTER:  Yeah, when this  
2   document was being used.

3           A.    I -- I would have to -- I would have to  
4   look that up to see what he would we might have --  
5   today, I know we absolutely have more -- more --  
6   multiple different training programs.  But in  
7   2018, I don't know if this was the only one or  
8   not.

9           Q.    Okay.  Do you know when multiple  
10   different training programs started to be used by  
11   Albertsons?

12          A.    I know at minimum we were doing them in  
13   probably around this timeframe.  And afterwards,  
14   we started developing newer training programs on  
15   top of this.  So we had a comprehensive controlled  
16   substance training program.  We have a training  
17   program on stimulants.  We have a training program  
18   on Suphedrine, methamphetamine processes.  We have  
19   a program on PDMP.  PDMP has probably been around  
20   longer.

21                But so there's -- there's multiple  
22   different controlled substance programs.  I just  
23   couldn't tell you like dates on when each one  
24   started.

25          Q.    But they would have started at some

1 point after 2018?

2 A. There might have been -- the PDMP  
3 one might have been earlier than that. The  
4 comprehensive one I mentioned was after this,  
5 yes.

6 Q. Okay. We can jump down to page 31 of  
7 the slide presentation. That's Bates labeled  
8 384619.

9 Let me know when you're there.

10 A. I've got it.

11 Q. The title of the slide is "Prohibitions  
12 to Dispensing."

13 Do you see that?

14 A. Yes.

15 Q. Okay. And the slide lists the  
16 following five bullet points under that heading  
17 "for office use." Number 2 is casual sales.  
18 Number 3, issued in the prescriber's name.  
19 Number 4, issued for prescriber staff or family  
20 member, not intended for legitimate medical  
21 purpose. And then number 5, pharmacist must use  
22 professional judgment.

23 Do you see that?

24 A. Yes.

25 Q. So it looks like Albertsons identifies

1 four instances in which its pharmacists should not  
2 dispense controlled substance prescriptions,  
3 correct?

4 A. Correct.

5 Q. Okay. And beneath the slide, let's  
6 read the speakers notes.

7 It says: "Controlled substances cannot  
8 be dispensed if the prescription is issued or  
9 written for office use, casual sale, issued by a  
10 prescriber in the name of the prescriber, or if  
11 issued to a prescribe's staff or family member  
12 that is not for a legitimate medical purpose. The  
13 pharmacist should always use their professional  
14 judgement when dispensing any controlled substance  
15 including evaluating any red flags that might  
16 exist.

17 "For example, does it make sense for a  
18 dentist or a podiatrist to write a prescription  
19 for Adderall?"

20 Did I read that okay?

21 A. Yes.

22 Q. I'll represent to you this is the only  
23 slide in the presentation that references the  
24 phrase "red flags."

25 Are you aware of any separate trainings

1 for Albertsons' pharmacists that dives deeper into  
2 the area of identifying and resolving red flags  
3 prior -- in or prior to this 2018 timeframe?

4 A. When you say "training," a formal  
5 training program like this, no. Just in  
6 communications -- in written communications to  
7 stores.

8 Q. Okay. And would you consider the slide  
9 to be a -- you're the VP of Pharmacy Compliance  
10 and Government Affairs, correct?

11 A. Yes.

12 Q. Would you consider this slide to be a  
13 thorough and robust training for Albertsons'  
14 pharmacists on how to identify and resolve red  
15 flags?

16 A. Can I browse through this quickly?

17 Q. Sure.

18 A. Yeah, this is -- as far as -- as far  
19 as focusing on red flags, it is not -- I would  
20 not describe it as a thorough -- this is more  
21 focused on -- at this time, we were -- again,  
22 part of our overall quality improvement processes  
23 in the evolution of our programs is we continued  
24 to evolve and change as the industry changed.  
25 This, if you look, is more focused on losses and

1 reporting and documentation of -- of records,  
2 which is why future trainings really did start to  
3 delve more into more detailed focus on red flags  
4 and -- and training around that, outside of the  
5 previous communication that we had already sent  
6 out in written format.

7 Q. Right.

8 And that evolution and those additional  
9 trainings came on or after 2018, correct?

10 A. Yes. The -- the formal training, yes.

11 MR. LICHTER: Okay. We can set this one  
12 aside.

13 I'll have the next document marked as  
14 Exhibit 7.

15 (Exhibit 7 marked.)

16 MR. LICHTER: For the record, this document  
17 is Bates numbered ALB-MDLCT9-00015802.

18 Q. BY MR. LICHTER: Have you seen this  
19 document before?

20 A. Not this specific document, that I  
21 recall, no.

22 Q. Okay. Is this a store compliance  
23 evaluation conducted by Albertsons on August 28th,  
24 2019, for Albertsons Store No. 4290?

25 A. Yes.

1           Q.    Okay.  I'll represent to you that  
2           according to the store chart we saw in Exhibit 3,  
3           Store 4290 is located at 480 Northwest Parkway in  
4           Azle, Texas, which is located in Tarrant County.

5                   Any reason to dispute that?

6           A.    No.

7           Q.    According to this document, David Hicks  
8           was the District Pharmacy Manager of this pharmacy  
9           at the time, correct?

10          A.    Yes.

11          Q.    Okay.  And what are the general duties  
12          of a District Pharmacy Manager?

13          A.    They oversee the overall operations of  
14          a pharmacy for a given district.  So usually a  
15          group of 20 to 40 stores -- pharmacies.

16          Q.    And toward the top of the document, it  
17          says:  "Southern - RX Compliance Evaluation ABS."

18                   Does that mean -- well, are the  
19          Albertsons Tarrant County, Texas, stores located  
20          in Albertsons' southern district of pharmacies?

21          A.    Southern division.

22          Q.    Southern division?  Okay.

23          A.    They are.  I don't know if any -- I  
24          think -- there might be some United stores also in  
25          that group.  But southern would definitely

1 encompass this -- this territory, yes.

2 Q. Do you know about how many Albertsons  
3 stores are in the southern division?

4 A. That 150 number I gave you earlier was  
5 probably what I was thinking of for southern  
6 division. So that might not be exclusively Texas,  
7 but I don't know the number off the top of my  
8 head, no.

9 Q. Okay. Is this document a fairly  
10 typical example of other compliance evaluations  
11 that Albertsons conducts for its stores in  
12 Tarrant County, the same general information and  
13 format --

14 A. Yes. It is -- it is a standard field  
15 evaluation report, yes.

16 Q. Okay. Is this the standard field  
17 evaluation report for -- throughout the country  
18 that Albertsons uses?

19 A. Yes. Correct. Yes.

20 Q. Do you know when Albertsons first  
21 started conducting reviews like this?

22 A. I don't know about the reporting that  
23 you're looking at, but we've been doing field  
24 evaluations for -- prior to 2015. So that's when  
25 I started my position. I know they were going

1 before that.

2 Q. You don't know when they would have  
3 first started?

4 A. I don't know when they originally  
5 started, no.

6 Q. And you don't know when this iteration  
7 of the reviews first came into being?

8 A. This iteration, not exactly. But I  
9 think it was started before this 2019 time period.

10 Q. Do you know how the reviews have  
11 changed over time?

12 A. The questions have changed, modified.  
13 There's been changes in the -- so this specific  
14 list of questions that you're looking at get --  
15 fluctuate every year, couple of years. We go  
16 through and revise and update. Again, part of our  
17 continual quality process.

18 The -- more recently, we've had a  
19 difference in some of the grading processes. But  
20 at this time, it was fairly consistent for this  
21 time and prior.

22 Q. Can you break down, I guess, the  
23 general overview of how these reviews are  
24 typically conducted by Albertsons?

25 A. So, yeah, sure.



1                   We have a group of what we -- the  
2           term is field evaluators. They are auditors,  
3           basically. And they go into a pharmacy with a  
4           standard list of questions, and they audit the  
5           pharmacy against performance of those questions,  
6           given specific guidelines on what to do for each  
7           question. And that's usually done four times a  
8           year.

9           Q.    Okay.

10          A.    For each store.

11          Q.    Are there usually specific planned  
12          dates or are they kind of surprises to people who  
13          work in the pharmacies?

14          A.    They are usually surprises to people  
15          in the pharmacies. They are strict guidelines.  
16          They are -- usually, if you fail one question, you  
17          fail the entire -- the entire audit. So a failure  
18          is one wrong. It is a very high bar we set.

19          Q.    And how big is the team that conducts  
20          these audits?

21          A.    Across the country? I think like  
22          today -- I can't tell you how many we had in 2019.  
23          But today, we have around 40 of them.

24          Q.    Are the -- are specific auditors  
25          assigned to specific stores or do they kind of --

1 is it -- is it a random assignment process?

2 A. It is usually not random. They are  
3 geographic because, obviously, they have a lot of  
4 driving to do to go from store to store. So a  
5 person would be assigned stores in -- in a given  
6 area.

7 Q. So generally, the same auditors that  
8 are auditing and reviewing a certain set of  
9 stores?

10 A. Typically, yes. Outside of turnover,  
11 yes.

12 Q. And when they conduct their audits, do  
13 they speak with the pharmacist directly? Who do  
14 they talk to to conduct their audits?

15 A. They will speak with the pharmacist on  
16 duty. Whatever they need to do to accomplish all  
17 of the questions, get answers to all of the  
18 questions. They may have to talk to technicians  
19 there. But usually, all of their activity will be  
20 limited to the pharmacy and the people in the  
21 pharmacy.

22 Q. Okay. What's the purpose of these  
23 evaluations?

24 A. It is compliance quality control. So  
25 it looks at all different levels of compliance for

1 the pharmacy to identify if any stores are out of  
2 compliance. And we have action plans that are --  
3 if someone fails or they are -- their field  
4 evaluation, they can be put on an action plan to  
5 resolve the situation. And they will get a  
6 followup visit, and it is tracked over time. So,  
7 you know, our goal is to get all of the stores  
8 100 percent compliant on everything.

9 Q. How long does the evaluation process  
10 typically last?

11 A. It is, again, changed over the years.  
12 At this time, this process for the one in 2019 was  
13 probably a three- to four-hour audit.

14 Q. How long does it typically last today?

15 A. About two hours, two to two and a half.

16 Q. Is there a reason why the time dropped  
17 down to about half?

18 A. We had one of the -- some of the  
19 questions changed that were more time-consuming,  
20 and that's the only reason.

21 Q. Do you recall which questions those  
22 were?

23 A. They were not based around the  
24 controlled substance section. They were in the  
25 dispensing section around third party audits.

1 Q. Okay. And does anybody review the  
2 evaluation after it is completed?

3 A. Yes. The DPM gets a copy. Our  
4 compliance director would get to see the copy.  
5 The DPO, I believe, also might get the copy. That  
6 is the Director of Pharmacy Operations. I'm not  
7 100 percent sure on that though.

8 Q. Do any of those people have any  
9 specific roles or duties after they receive a copy  
10 of the compliance evaluation?

11 A. They -- they should -- for example, the  
12 DPM would be asked to follow up with the pharmacy  
13 to make sure that their action plan they are  
14 putting together is put together and then followed  
15 through on. And then the -- for the next field  
16 evaluation, that would be an opportunity to check  
17 it, as well.

18 Q. And is it the actual auditors that are  
19 putting together the action plans or is that  
20 someone else?

21 A. No. The pharmacy puts -- the  
22 pharmacist at the pharmacy would put the action  
23 plan together for themselves.

24 Q. So the pharmacist, I guess, writes out  
25 their own action plan for what they are going to

1 do?

2 A. Yes.

3 Q. Okay. And the DPM assures that that  
4 action plan is carried out?

5 A. Yes.

6 Q. Here on the document it indicates that  
7 the total score here is a fail.

8 What's the significance of that?

9 A. It means they got at least one wrong.  
10 You only get a pass if it is [REDACTED].

11 Q. Okay. So if any question is -- is  
12 answered in the negative or wrong, the entire  
13 score is a fail?

14 A. Yeah.

15 Q. Is that how it is currently scored?

16 A. No.

17 Q. How is it currently scored?

18 A. It is currently scored as a [REDACTED]  
19 is a pass. [REDACTED] of the points on the  
20 available is a pass. In addition, there's five  
21 critical questions where if you fail any of the  
22 five critical questions, you failed the whole  
23 audit.

24 Q. Do you recall what those five critical  
25 questions are?

1           A.     Not all of them, no.

2           Q.     Are any of them related to controlled  
3 substances?

4           A.     The controlled substance count is one  
5 of them, I believe, yes.

6           Q.     So if the count of -- the count of  
7 controlled substances stored on the shelf of the  
8 pharmacy, if there's a discrepancy there, the  
9 entire score is a fail?

10          A.     Yes.

11          Q.     Okay. Let's flip to a different part  
12 of the evaluation, starting on the second page of  
13 the document. This is, I guess, Section 1,  
14 pharmacy operations.

15                 Do you see that?

16          A.     Yes.

17          Q.     Okay. And that entails seven specific  
18 questions that the evaluator answers, correct?

19          A.     Correct.

20          Q.     And this deals with issues like whether  
21 proper signage is posted, if employees are wearing  
22 name tags, is there a list of texts and  
23 pharmacists, stuff like that, right?

24          A.     That's correct.

25          Q.     Okay. If you'll look at Section 2 on

1 the following page, pharmacy security.

2 Do you see that?

3 A. Yes.

4 Q. And that entails eight specific  
5 questions that the evaluator answers, right?

6 A. Yes.

7 Q. And that deals with issues like whether  
8 the entrances and exits are secured, whether  
9 documents are shredded, whether protected health  
10 information is -- is protected, personal health  
11 information is protected; is that right?

12 A. Yes.

13 Q. Stuff along those lines?

14 A. Yes.

15 Q. And the next page is Section 3,  
16 pharmacy drug handling and storage.

17 Do you see that?

18 A. Yes.

19 Q. And here are seven specific questions  
20 that the evaluator answers, right?

21 A. Correct.

22 Q. And here it is dealing with things  
23 like proper refrigeration temperature, expired  
24 medications, hazardous waste storage, stuff like  
25 that, right?

1           A.     Correct.

2           Q.     Okay.   Section 4 is pharmacy controlled  
3           substances.

4                     Do you see that?

5           A.     I do.

6           MR. LICHTER:   Okay.   For the record, this is  
7           Bates No. 15806.

8           Q.     BY MR. LICHTER:   And this section  
9           entails six specific questions and one  
10          miscellaneous place holder.

11                     Do you see that?

12          A.     Yes.

13          Q.     Okay.   And can you explain the scoring  
14          system that we see here?

15          A.     So there's a number of points assigned  
16          per question from -- so a value perspective.  
17          Because when you're done, a percentage is -- is  
18          not a percentage of questions answered, but a  
19          percentage of your points.

20                     So you'll see questions assigned [REDACTED]  
21          [REDACTED], etcetera.   So they base it  
22          on different value.   And then how much you got of  
23          that total value that you -- or the potential you  
24          could have gotten and then what you actually  
25          earned is what is documented.   So the maximum



1 amount you can get for points for each question  
2 would be in that potential column. And then the  
3 actual -- the Field Evaluator found is in the  
4 other column.

5 Q. Okay. Were the only potential scores  
6 here a 0 or the maximum amount of points?

7 A. We still gave a score. So even though  
8 it was like you get [REDACTED], it would be a  
9 fail, but you'd know you had gotten [REDACTED],  
10 which would help you understand if you were really  
11 far off or not that far off from passing.

12 Q. Okay. And I would like to read the  
13 specific questions for this section into the  
14 record here.

15 Number 1: "Does the pharmacist verify  
16 the receipt of Schedule II product on the DEA  
17 222?"

18 Do you see that?

19 A. Yes.

20 Q. And the DEA 222, that's the hard copy  
21 form that pharmacists fill out and send to the  
22 distribution center, correct?

23 A. Yes. And there's electronic 222's, as  
24 well.

25 Q. Okay. And number 2: Are controlled

1 substances -- Are controlled substance invoices  
2 detailed, signed, dated, and filled by RPh?

3 A. Filed, but yes.

4 Q. Filed by RPh.

5 What does RPh stand for?

6 A. Pharmacist, registered pharmacist. It  
7 is kind of an abbreviation for pharmacist.

8 Q. Number 3: "Is the monthly audit of  
9 Schedule II Controlled Substances and the annual  
10 Controlled Substance inventory on file?"

11 Correct?

12 A. Correct.

13 Q. Number 4: "Does the quantity of  
14 controlled substances on hand agree to the  
15 perpetual inventory system?"

16 Is that right?

17 A. Correct.

18 Q. And that just means do the medications  
19 on the shelf match the electronic inventory  
20 system?

21 A. What's in the system, yes.

22 Q. Okay. Number 5: "Does the pharmacy  
23 have the current Power of Attorney (POA) on file  
24 and CSOS POA on file?"

25 A. Correct.

1           Q.    And number 6:  Are emergency CII  
2   prescriptions received within the 7 day timeframe  
3   of being filed, correct?

4           A.    Filled, yes.

5           Q.    Filled, sorry.

6                   Number 7, this just says:

7   "Miscellaneous question."

8                   Do you know what typically happens  
9   here?

10          A.    I don't on that one, no.  I think it  
11   is -- if there's a specific question that we need  
12   asking, that would be where it is asked.  But on  
13   this one, it is not applicable.  So. . .

14          Q.    All right.  Would you agree that the  
15   questions in this section, this pharmacy  
16   controlled substances section, typically deal with  
17   recordkeeping and stocking issues?

18          A.    Correct.  Yes.

19          Q.    And the parts of the compliance  
20   evaluation that specifically deal with controlled  
21   substances are contained in this section, correct?

22          A.    Primarily, yes.

23          Q.    Okay.  Is there another section you're  
24   aware of that specifically deals with controlled  
25   substances?

1           A.     Specifically controlled substances, no.

2           Q.     Okay.  So there's no part in the -- in  
3     these evaluations we're looking at that confirms  
4     whether prescriptions with red flags are being  
5     properly investigated and resolved, correct?

6           A.     That's correct.  That's not part of  
7     this audit.

8           Q.     And there's no part of the audit  
9     that confirms whether the resolution of red flag  
10    prescriptions have been properly documented,  
11    correct?

12          A.     That's correct.

13          Q.     And there's no part of the compliance  
14    evaluation that determines if nearby pill mills  
15    are being serviced by the pharmacy, correct?

16          A.     That's correct.

17          Q.     No part of the evaluation that  
18    considers whether controlled substance dispensing  
19    levels or trends -- that considers dispensing  
20    levels or trends for the pharmacy, correct?

21          A.     Correct.

22          Q.     Okay.  Look at Section 5, pharmacy  
23    dispensing, at the bottom of the same page.  This  
24    section deals with medications that need to be  
25    returned to stock, prescriptions left in the will

1 call area, mail delivery, stuff like that,  
2 correct?

3 A. Yes, correct. Sorry.

4 Q. Are there any other components of the  
5 compliance evaluations that are not included in  
6 this document?

7 A. There's other compliance evaluations  
8 other than the field evaluation, if that's what  
9 you're asking, yes. As far as -- this is all  
10 that is part of this specific type of compliance  
11 evaluation. There's other evaluations that we do  
12 though.

13 Q. Okay. What are the other types of  
14 evaluations that you do?

15 A. So we have a process where our --  
16 our DPM's, our District Pharmacy Managers,  
17 visit pharmacies twice a year and evaluate the  
18 dispensing habits and patterns, kind of the  
19 things that you were talking about that weren't on  
20 this list, are on that -- are part of that  
21 evaluation. So they'll look for prescriptions  
22 being -- documentation of red flags, reviewing  
23 prescriptions. All of the things that you  
24 mentioned would be part of that type of an  
25 evaluation.

1                   And then there's a self-evaluation  
2     that stores do that -- where they will do a  
3     self-evaluation of that four times a year. And  
4     the DPM goes in and, again, does their own  
5     full-blown evaluation and follows up on those  
6     self-evaluations, as well.

7                 Q.     And the first one you mentioned where  
8     the DPM's visit the pharmacies twice a year, is  
9     there a name for those -- for those evaluations?

10                A.     I think we are just calling them --  
11     we are horrible with names. I think they are just  
12     called controlled substance audits or something  
13     like that. I don't know the formal name we're  
14     using right now honestly.

15                Q.     Do those have any specific format or  
16     structure like the compliance evaluations we're  
17     looking at now?

18                A.     They do. There are specific things  
19     they look at and need to document, yes.

20                Q.     So that's a list of questions to be  
21     answered?

22                A.     It is probably not as formal as this  
23     one. This one has been around a long time. But  
24     it is -- it definitely has a list of -- of items  
25     for the -- it is not listed as questions, but it

1 is -- no, let me correct that. There are some  
2 questions on there. So, yes, it is formalized.

3 Q. Do you know when that audit process was  
4 first implemented by Albertsons?

5 A. Originally, in its original form, I  
6 want to say we started it 2017, '18 timeframe.  
7 And then it has evolved over time.

8 Q. Any specific ways that it has evolved,  
9 that you know?

10 A. It has become more formalized, more  
11 strict documentation. You know, kind of like  
12 this is very detailed questions and -- and  
13 documentation of it. It was a little more  
14 informal initially where -- less structured, I  
15 guess, is the best way to say it. It has just  
16 become more structured.

17 Q. Prior to that 2017-2018 time period,  
18 there wasn't any audits being conducted on the  
19 pharmacies regarding dispensing and trends, red  
20 flags, stuff like that?

21 A. I don't know if they weren't happening.  
22 It wasn't a formalized process.

23 Q. So there was an informal process in  
24 place?

25 A. DPM's, it is -- part of their job is to

1 look at everything on -- in the operations of the  
2 pharmacy. So they should be looking at that type  
3 of thing in -- in their visit of pharmacies most  
4 frequently of anyone.

5 Q. So prior to 2017-2018, the review would  
6 kind of be a component of the DPM's general duty  
7 to -- to oversee the goings on of their  
8 pharmacies, right?

9 A. Correct.

10 MR. LICHTER: Okay. It is 12:00 o'clock  
11 right now. I don't know if you want to do a lunch  
12 break.

13 MR. DORAN: Yeah, that sounds good. We can  
14 go off the record.

15 THE VIDEOGRAPHER: The time is 12:03 p.m.  
16 Off the record.

17 (Lunch recess taken.)

18 THE VIDEOGRAPHER: The time is 12:41 p.m.  
19 On the record.

20 MR. LICHTER: Okay. Welcome back.

21 If we can have the next document marked  
22 as Exhibit 8.

23 (Exhibit 8 marked.)

24 MR. LICHTER: For the record, this document  
25 is Bates No. ALB-MDLCT9-00014044.



1 Q. BY MR. LICHTER: And have you seen this  
2 document before?

3 A. Can I have a second to read it?

4 Q. Sure.

5 A. I don't recall seeing this, no.

6 Q. Okay. Just looking at the first page,  
7 does this appear to be an August 29, 2019, e-mail  
8 string between Jessica Covaci and other Albertsons  
9 employees?

10 A. Yes.

11 Q. And who is Jessica Covaci?

12 A. She was my Director of Pharmacy  
13 Compliance.

14 Q. Is she no longer?

15 A. Correct.

16 Q. What is she now?

17 A. He's not employed with our company.

18 Q. Do you know about when she left the  
19 company?

20 A. 2022. We're in 2023 now. So I think  
21 it was 2022 sometime.

22 Q. Do you know why she left?

23 A. No.

24 Q. Do you know whether she was let go by  
25 Albertsons or if she left on her own volition?

1           A.     She left on her own volition.

2           Q.     Okay. We can start on page 14045, at  
3     the bottom. It is the second page of the  
4     document.

5                     It looks like someone from pharmacy  
6     Store No. 4404 sending an e-mail to Raed Alzahrani  
7     on August 7, 2019.

8                     Do you see that?

9           A.     Yes.

10          Q.     Do you know who Raed Alzahrani is?  
11                     I'm sorry, "rani."

12          A.     I'm not going to try it either.

13                     He was a DPM. So a District Pharmacy  
14     Manager.

15          Q.     Okay. And looking at the bottom of the  
16     last page, it looks like the person sending this  
17     is named Dave Zandberg, Staff Pharmacist from  
18     Store No. 4404.

19                     Do you see that?

20          A.     Yes.

21          Q.     Do you know where Store 4404 is  
22     located?

23          A.     I don't. But based on this, it is  
24     probably in the Oregon area.

25          Q.     And looking at the top of the last

1 page, Mr. Zandberg writes: "This week we are  
2 having patients come directly from the Wal-Mart  
3 pharmacy to our counter with their prescriptions  
4 after being told by the Wal-Mart that 'they follow  
5 the government guidelines when filling opioid  
6 prescriptions.'

7 "The inference is that we at Safeway do  
8 not and therefore will fill those prescriptions."

9 Do you see that?

10 A. Yes.

11 Q. When this e-mail was sent in 2019,  
12 Albertsons owned and operated the Safeway banner  
13 of pharmacies, correct?

14 A. Correct.

15 Q. Okay. And Albertsons had owned and  
16 operated those pharmacies since 2015, correct?

17 A. Correct.

18 Q. Okay. So at this time in 2019, this  
19 pharmacy was operating under the rubric of  
20 Albertsons national policies and procedures,  
21 correct?

22 A. Correct.

23 Q. And the e-mail continues: "I have  
24 pointed out to you that we have had an increasing  
25 number of C2 rx's being presented to us by current

1 and former Wal-Mart customers who find themselves  
2 unable to get pain meds for post op pain and for  
3 higher doses in the months since Wal-Mart  
4 announced their change in policy."

5 Do you see that?

6 A. Yes.

7 Q. Do you know the change in Walmart's  
8 policy he's referencing here?

9 A. Not exactly.

10 Q. Do you have any idea?

11 A. I believe they put day supply limits on  
12 some items and -- and some C2's, I think. I'm not  
13 exactly sure the details of it.

14 Q. Was that a Walmart change that occurred  
15 in 2019, as far as you know?

16 A. I don't remember the timeline. But it  
17 could have, yes.

18 Q. Were you aware of a -- are you aware of  
19 a practice of patients rejected at other pharmacy  
20 chains coming to Albertsons pharmacies to obtain  
21 opioid prescriptions?

22 A. I had heard that, yes.

23 Q. When -- when did you first hear that?

24 A. I couldn't tell you exactly.

25 Q. Could you tell me the year that it may

1 have been?

2 A. I mean, around this timeframe perhaps.

3 Q. Around 2019?

4 A. Yeah.

5 Q. Did you hear that in the context of any  
6 specific geographic area or was that an issue for  
7 the company as a whole?

8 A. I don't recall if it is any specific  
9 geographic area.

10 Q. So a few paragraphs down, he writes:  
11 "I have also pointed out to you that our company's  
12 relationship with GoodRx seems to make us the low  
13 price leader on the common c2 rxs in our market.

14 "What is happening right now is people  
15 are coming to us for opioids and expecting less  
16 scrutiny and expecting to pay less money."

17 What is GoodRx?

18 A. GoodRx is a discount card company.

19 Q. So according to this pharmacist,  
20 patients from other stores expected less scrutiny  
21 from Albertsons pharmacies when trying to fill  
22 opioid prescriptions, correct?

23 A. No. According to this, I read it as  
24 they were expecting to be able to get them for  
25 lower costs because -- because our GoodRx prices

1       were supposedly lower than others.

2               Q.     Do you see he used the phrase  
3       "expecting less scrutiny"?

4               A.     I'm sorry.  Could you -- could you --  
5       let me read that again.

6               Q.     Sure.  
7               The sentence that begins:  "What is  
8       happening right now" --

9               A.     That's what his statement is, yes.

10              Q.     Okay.

11              A.     I see that.

12              Q.     According to him, the patients go to  
13       Albertsons expecting less scrutiny --

14              A.     That's what --

15              Q.     -- than other pharmacies?

16              A.     That's what he stated, yes.

17              Q.     Is this consistent with what you heard  
18       about being an issue at Albertsons pharmacies  
19       around 2019?

20              A.     We know that -- I know that GoodRx  
21       pricing, we -- we were coming in lower.  And  
22       we actually addressed that and the pricing for  
23       products for -- for controlled substances,  
24       specifically for GoodRx, was changed.  So that  
25       was no longer the case after I found out about

1       it.

2               Q.     And when was that changed?

3               A.     Quickly after we found out about it.

4       So if I became aware around this time, it was  
5       changed shortly thereafter.

6               Q.     So around 2019?

7               A.     I'm guessing, yes.

8               Q.     What about his point about customers  
9       expecting less scrutiny from Albertsons? Were any  
10      changes made on or around 2019, based on that  
11      observation?

12              A.     I don't know if I agree with that  
13      comment. That's his comment. But we've  
14      constantly been, as I said, evolving and enhancing  
15      our overall procedures and policies and trainings  
16      to educate our pharmacy teams to put in checks in  
17      place, compliance programs in place, so that we  
18      can, you know, be scrutinizing all of our  
19      controlled substance activities. Over the years,  
20      we've been growing and evolving on this for -- for  
21      quite a while.

22              Q.     Had it ever been brought to your  
23      attention that Albertsons' pharmacists had this  
24      opinion?

25              A.     No.

1           Q.    Below that, he says:  "I believe that  
2    it is neither wise or ethical to be advertising  
3    low prices on narcotics."

4                   Do you see that?

5           A.    Yes.

6           Q.    And does Albertsons agree with that  
7    statement?

8           MR. DORAN:  Objection.

9           THE WITNESS:  We don't advertise prices on  
10   narcotics.  So I don't agree with that statement  
11   at all.  As far as wise or ethical, I don't have a  
12   comment on that.  We don't advertise prices on  
13   narcotics.

14          Q.    BY MR. LICHTER:  So you don't know what  
15   he's referring to here?

16          A.    No.  I think he's misinterpreting how  
17   the process works.

18          Q.    Okay.  And he continues:  "I also  
19   believe that Safeway will be on the wrong side of  
20   history if it contributes more than its share to  
21   the ongoing opioid crisis.

22                   "While Wal-Mart's policy may be an over  
23   reaction to the current climate, they have at  
24   least articulated a policy which they are  
25   following here in Dallas Oregon.



1                   "With state governments looking for  
2    reimbursement for the cost of the opioid crisis it  
3    may be prudent for Safeway to evaluate it's  
4    position in the narcotic market."

5                   Do you see that?

6                   A.    Yes.

7                   Q.    You said that Albertsons changed its  
8    policy regarding the pricing of controlled  
9    substances around 2019; is that right?

10                  A.    It wasn't a policy.  It was a  
11   contractual agreement with GoodRx where we just --  
12   when we -- we went to GoodRx and changed the  
13   pricing.  So it wasn't a company policy.

14                  Q.    Do you recall when the contract with  
15   GoodRx began?

16                  A.    I do not.

17                  Q.    You don't know what year?

18                  A.    I don't.

19                  Q.    And according to this, it looks like  
20   the store -- this pharmacist is from -- 4404 is  
21   located in Dallas, Oregon; is that right?

22                  A.    That sounds correct.

23                  Q.    And the pharmacy -- pharmacy is located  
24   in Oregon, but Albertsons' dispensing policies are  
25   the same across the country, correct?

1 MR. DORAN: Objection.

2 THE WITNESS: Correct.

3 Q. BY MR. LICHTER: Does Albertsons agree  
4 with the statement here that they would be on the  
5 wrong side of history if it contributes more than  
6 its share to the ongoing opioid crisis?

7 MR. DORAN: Objection.

8 THE WITNESS: As it is written, do I agree  
9 with that -- does Albertsons agree with that  
10 statement? I don't know if I can speak on how  
11 Albertsons would agree or not agree with that  
12 statement.

13 Q. BY MR. LICHTER: What about you  
14 personally?

15 A. It kind of -- it is a very qualified  
16 statement. I don't believe we contribute to our  
17 share. But it is qualified as an if/then. So  
18 that makes it difficult. But I don't believe we  
19 were contributing to more -- especially not more  
20 than our share to the ongoing opioid crisis. I  
21 just disagree with the statement in general. We  
22 would never -- of course, we would never want to  
23 be in that situation. So it is -- it is a very  
24 difficult statement to comment on.

25 Q. Do you believe Albertsons has

1 contributed at all to the opioid crisis?

2 MR. DORAN: Objection; foundation.

3 THE WITNESS: There's -- Albertsons, I  
4 believe, has done everything in our power to try  
5 to make sure that we're dispensing prescriptions  
6 responsibly. I think there is -- this is an  
7 entire sociological economic -- I don't even know  
8 how to describe it. But this is so much bigger  
9 than just any one company. I think it is  
10 impossible to say that there's -- that no one  
11 contributed to. It is impossible to say that  
12 everyone contributed to it. So it is -- it is  
13 such a bigger, more complex picture than did you  
14 contribute to it. And you would have to define  
15 what contribute means, too.

16 Q. BY MR. LICHTER: So do you believe  
17 Albertsons had any role in -- in the opioid  
18 crisis?

19 MR. DORAN: Objection.

20 THE WITNESS: We dispense opioid products,  
21 and we do so to the best of our ability in a  
22 compliant fashion, making sure that the right  
23 patients get the products. No one is perfect  
24 and -- but we do everything in our power and our  
25 pharmacists do everything in their power to ensure

1       that they are doing it appropriately.

2                       So I can't tell you we've never --  
3       you know, pharmacists have never made a mistake.  
4       Everything we've done is an ongoing evolution  
5       and -- and process improvement. But these are  
6       highly trained, educated healthcare providers  
7       in -- in the field. We have the utmost focus on  
8       doing things the right way and making sure our  
9       patients and our communities are safe. So never  
10      deliberately would we ever have done anything to  
11      contribute, quote, unquote, to the opioid crisis.

12               Q.     BY MR. LICHTER: Would you agree that  
13      an opioid crisis exists in the country?

14               MR. DORAN: Objection.

15               THE WITNESS: I believe that -- personally,  
16      I believe that, yeah, there's -- there's a large  
17      opioid problem right now. And there -- especially  
18      with -- I mean, the overdoses on fentanyl and  
19      things like that, yes, 100 percent.

20               Q.     BY MR. LICHTER: Do you believe that  
21      problem exists in Tarrant County, Texas?

22               A.     I don't know.

23               Q.     All right. And the e-mail ends with:  
24      "Please pass this onto whoever above you that  
25      might be in a position to affect policy."

1 Do you see that?

2 A. Yes.

3 Q. Would there be a specific person at --  
4 at Albertsons that would have the ability to  
5 change the company policy regarding its role in  
6 the opioid crisis?

7 MR. DORAN: Objection.

8 THE WITNESS: Is there a specific person?  
9 Our -- our pharmacy policies are -- are created  
10 and guided and developed in combination with a  
11 group of stakeholders involved, compliance being  
12 one of them, myself being one of them. So there  
13 would be -- this could go to a number of people  
14 that could have a position to affect policy. But  
15 compliance would be one of them.

16 Q. BY MR. LICHTER: Okay. And you don't  
17 believe this e-mail ever reached your desk,  
18 correct?

19 A. I -- I can't honestly say yes or no on  
20 that. Some of -- when you got to the end of it,  
21 a little bit of it reminded me, especially the  
22 GoodRx part, reminded me that we did have this  
23 issue on GoodRx. So it is possible I read this,  
24 but I did not recognize it at first, no.

25 Q. Okay. We can go back to the first page

1 of the document.

2 Take a look at the middle e-mail on  
3 this same chain. It appears to be sent from  
4 Raed Alzahrani to Jessica Covaci and Stephen Certo  
5 on August 28, 2019.

6 Do you see that?

7 A. Yes.

8 Q. Do you know who Stephen Certo is?

9 A. He's the DPO, Director of Pharmacy  
10 Operations, for the Portland division.

11 Q. And Mr. Alzahrani writes: "Thank you  
12 Jessica for your response. I apologize I don't  
13 think I articulated myself correctly in my  
14 previous email, my question is how would you  
15 suggest I word it to any pharmacist that asks, for  
16 example would it be appropriate to say use your  
17 judgment and the company won't retaliate against  
18 you, but my concern is the word retaliate too  
19 harsh. I would like your opinion on the wording.  
20 Should I say use your judgment and that's it. I  
21 just wanted to bounce the idea off of you on how I  
22 should word it."

23 Do you see that?

24 A. Yes.

25 Q. And I guess it looks like Raed is

1 asking for some guidance on how to talk to other  
2 Albertsons pharmacists who might be concerned that  
3 using their profession judgment might result in  
4 retaliation from Albertsons; is that right?

5 MR. DORAN: Objection.

6 THE WITNESS: I don't know exactly what  
7 he's thinking when he wrote it, but that's what  
8 it. . .

9 Q. BY MR. LICHTER: Based on the context  
10 of the e-mail?

11 A. Based on the context, that's what it  
12 implies, yes.

13 Q. And we can look at Ms. Covaci's  
14 response at the very top on August 29, 2019.

15 She writes: "Hi Raed - No worries at  
16 all. When things come in writing, I have to give  
17 a written response. This one's becoming more of a  
18 canned response when we have pharmacy team members  
19 that send in emails like the one you received."

20 Do you see that?

21 A. Yes.

22 Q. Did you have any idea as to the volume  
23 of e-mails Albertsons has received from its  
24 pharmacists related to the issues raised in Raed's  
25 e-mail?

1           A.     No.

2           Q.     Given Ms. Covaci indicates there's been  
3     so many e-mails like this to warrant a canned  
4     response, does Albertsons have any sort of central  
5     filing system where it maintains these e-mails or  
6     other communications?

7           MR. DORAN:  Objection.

8           THE WITNESS:  Not that I know of.

9           Q.     BY MR. LICHTER:  Does Albertsons have  
10    any sort of tracking and monitoring system for  
11    when it receives e-mails like this from its  
12    pharmacists?

13          A.     Not that I know of.

14          Q.     Does Albertsons maintain a special file  
15    for e-mails it receives from its pharmacists like  
16    this?

17          A.     A file?  Could you repeat the question  
18    to make sure I heard it right?

19          Q.     Sure.

20                 Does Albertsons maintain a special or  
21    certain file for these e-mails that it receives  
22    from its pharmacists, like the ones we're looking  
23    at here?

24          A.     Nothing formalized, no.

25          Q.     Okay.  Anything informalized you're



1       aware of?

2               A.     It is possible.   I mean, Jessica --  
3       Jessica Covaci may have kept a file on this.  
4       Others may have files on this.   But I don't  
5       have -- there's no central corporate file for an  
6       e-mail like this.

7               Q.     Okay.   And you're not aware whether  
8       Ms. Covaci or anyone else keeps these e-mails and  
9       tracks them one way or the other, correct?

10              A.     No.

11              Q.     You can set this one aside.

12              MR. LICHTER:   The next document we'll have  
13       marked Exhibit 9.

14              (Exhibit 9 marked.)

15              MR. LICHTER:   For the record, this document  
16       is Bates No. ALB-MDLCT9-0003365.

17              Q.     BY MR. LICHTER:   And have you seen this  
18       document before?

19              A.     It doesn't ring a bell.   I'm not sure.

20              Q.     Okay.   Looking at the first page, does  
21       this appear to be a September 28, 2018, e-mail  
22       chain between Albertsons employees with the  
23       subject line:   "Narcan Do-dispense report P-06."

24              A.     Yes.

25              Q.     And looking at the second page, are we

1 looking at an e-mail from Ryan McCann to other  
2 Albertsons employees on September 27, 2018?

3 A. Yes.

4 Q. Okay. And it says Ryan McCann is the  
5 Director of Pharmacy Operations for Jewel-Osco  
6 pharmacies; is that right?

7 A. That's correct.

8 Q. And Albertsons acquired Jewel-Osco  
9 pharmacies in 2013, correct?

10 A. No.

11 Q. No? What year did it acquire  
12 Jewel-Osco pharmacies?

13 A. Well, when -- when Albertsons merged  
14 with American stores back in 1999, I think.

15 Q. It wasn't part of the merger with  
16 United?

17 A. No.

18 Q. Okay.

19 A. Jewel-Osco is an Illinois based chain.

20 Q. So at this time, when this e-mail was  
21 sent in 2018, it was operating under Albertsons'  
22 national policies and procedures, correct?

23 A. Correct.

24 Q. Okay. The e-mail says: "See attached  
25 Narcan dispensing report from P-06. Great

1 opportunity to go after a high ticket item to help  
2 drive some sales and protect against the opioid  
3 crisis right now. Definitely leaving money on the  
4 table with the co-dispense rate with fentanyl only  
5 at 2.5%."

6 Do you see that?

7 A. Yes.

8 Q. Okay. Is Narcan a prescription drug  
9 that reverses opioid overdoses?

10 A. It is.

11 Q. Okay. And Narcan is just the brand  
12 name of naloxone, right?

13 A. Correct.

14 Q. And does fentanyl have a higher  
15 overdose rate than other opioid medications?

16 A. Yes, especially illegal fentanyl.

17 Q. Do you know what P-06 means?

18 A. Period 6.

19 Q. Do you know what that means?

20 A. We divide our calendar into periods.

21 Q. Okay. How many periods?

22 A. 13.

23 Q. Okay. So when Ryan says Albertsons  
24 has a -- a co-dispense rate with fentanyl only at  
25 2.5 percent, does that mean only 2.5 percent of

1       Albertsons patients who receive a prescription for  
2       fentanyl also receive a prescription for Narcan?

3             A.     From us, yes.

4             Q.     Right.

5                     And according to the e-mail here,  
6       Albertsons is leaving money on the table by not  
7       dispensing Narcan as much as it could, which he  
8       calls a high ticket item, correct?

9             A.     Correct.

10            Q.     Do you agree that Narcan is a high  
11       ticket item?

12            A.     I honestly don't know the price of  
13       Narcan.

14            Q.     Okay. Flipping back to the first page.  
15       The bottom e-mail, in response to Ryan's e-mail,  
16       Chandni Clough, who is the Patient Care Services  
17       Manager, says: "Below is a list of plans with  
18       BIN/PCN information that shows \$0 copay claims for  
19       Narcan based on 2018 dispensing information for  
20       our division. Great resource to increase naloxone  
21       dispensing."

22                     Do you see that?

23            A.     I do.

24            Q.     And the top e-mail on the page in  
25       response to that, Ryan McCann responds to say:

1 "Good info on who to target for \$0 copay  
2 naloxone."

3 Do you see that?

4 A. I do.

5 Q. So the -- the information on who to  
6 target refers to patients that would not have to  
7 pay a co-pay to receive a naloxone prescription,  
8 correct?

9 A. Yes. Because there's less barriers for  
10 them to receiving the item, yes.

11 Q. Right.

12 And even if the patient does not pay a  
13 co-pay, Albertsons still makes money on the  
14 naloxone prescription, correct?

15 A. Possibly.

16 Q. Is that why the e-mail frames not  
17 dispensing naloxone as leaving money on the table?

18 MR. DORAN: Objection; misstates the  
19 document.

20 THE WITNESS: I can't speak to why, since it  
21 is -- those aren't my words. It is -- it is a  
22 generic colloquialism of leaving money on the  
23 table. But I think the comment about protecting  
24 against the opioid crisis also is pertinent. It  
25 is an opportunity to protect against the opioid

1 crisis right now, which is in the sentence before  
2 that. I think that is where, you know, the focus  
3 of the company is. We are a business also, of  
4 course, so filling prescriptions is part of --  
5 part of the business.

6 But protecting against the opioid  
7 crisis, this was a huge tool, especially around  
8 this timeframe when it became -- became more  
9 popular and pharmacists got the ability to  
10 dispense it.

11 I don't remember in Illinois if it is  
12 on standing order or they have prescriptive  
13 authority. It is probably standing order. It was  
14 a huge opportunity to have a positive impact on  
15 the community, and we wanted to take advantage of  
16 that.

17 Q. BY MR. LICHTER: The e-mail indicates  
18 that Albertsons is going to be targeting patients  
19 that have a \$0 co-pay for naloxone; is that right?

20 A. That's the terms he used, yes.

21 Q. Is that something Albertsons was doing  
22 at the time?

23 A. Yeah. The word "target" may sound --  
24 sound negative here. But it is really just, you  
25 know, when you're -- when you have a product like

1       this that is important, the price of the product  
2       can be a barrier. So if you know who it is  
3       inexpensive for and they need the product, it is  
4       kind of saying, this is your -- this is your  
5       population that needs the product and should have  
6       less barriers to go after.

7               So that's the intent of this is to  
8       educate everyone on a way to identify those who  
9       have lower barriers. So try to -- try to -- try  
10      to get those patients to have -- have this product  
11      with them to protect them.

12             Q.    And we're talking about Albertsons'  
13      fentanyl patients, correct?

14             A.    That was, I believe, the group that  
15      they were looking at. Because especially at the  
16      time that this was coming out, the -- I believe  
17      one of the recommendations was looking at patients  
18      who were on fentanyl because it is an extremely  
19      potent opioid that patients who are on it should  
20      have Narcan just as a protective item, just in  
21      case.

22             Q.    Right.

23                    And they are targeting the fentanyl  
24      patients only, according to this e-mail, that had  
25      a \$0 co-pay for naloxone, right?

1           A.     They are identifying them, yes.   Yes.

2           Q.     As a -- I guess from a policy  
3     standpoint, was Albertsons targeting its fentanyl  
4     patients for anything else?

5           A.     No.

6           Q.     Did Albertsons target its fentanyl  
7     patients for anything like heightened due  
8     diligence or scrutiny or anything like that when  
9     they presented a prescription?

10          MR. DORAN:   Objection.

11          THE WITNESS:   Due diligence in what?

12          Q.     BY MR. LICHTER:   In confirming that  
13     prescriptions they presented were for a legitimate  
14     medical purpose?

15          A.     No.   Because that's standard for all of  
16     our -- that's our standard process and policy for  
17     all of our controlled substances, not heightened  
18     for fentanyl.

19          MR. LICHTER:   You can set this one aside.

20                     The next document will be marked as  
21     Exhibit 10.

22                     (Exhibit 10 marked.)

23          MR. LICHTER:   This one, for some reason,  
24     didn't get stapled.   It is a two-page document.  
25     Hopefully it won't be a problem.



1                   It is a little cut off at the bottom of  
2     the page. But for the record, the Bates No. for  
3     this document is ALB-MDLCT9-0041477.

4           Q.     BY MR. LICHTER: Have you seen this  
5     document before?

6           A.     Yes.

7           Q.     When is the last time you saw it?

8           A.     It was a long time ago. So probably  
9     when it was written.

10          Q.     Okay. And is this an August 22, 2019,  
11     e-mail between -- e-mail string between you and  
12     Lynette Berggren?

13          A.     Yes.

14          Q.     Okay. And what was Lynette Berggren's  
15     role with Albertsons at this time?

16          A.     She was a director of -- I don't know  
17     her exact title, but she was in our legal  
18     department. She was a paralegal and director  
19     of -- I can't remember her title. Sorry.

20          Q.     Is she still with the company?

21          A.     No.

22          Q.     Do you know about when she left?

23          A.     She left -- I don't know. I want to  
24     say it was 2019, 2020 maybe.

25          Q.     Do you recall the circumstances of her

1 leaving?

2 A. No.

3 Q. Okay. Starting on the second page of  
4 the document, the bottom e-mail. Is this an  
5 August 12, 2019, e-mail from Jessica Covaci to  
6 Lynette Berggren, that was ultimately forwarded to  
7 you?

8 A. Yes.

9 Q. And Jessica writes: "Lynette -  
10 attached are copies of the appropriate dispensing  
11 materials referenced to share with Larry. It's a  
12 standalone doc and the excerpt from P&P."

13 Who is the Larry referenced here?

14 A. It looks like Larry Cot.

15 Q. His last name is C-o-t-e?

16 A. Correct.

17 Q. And who is Larry Cote?

18 A. He was outside counsel. He works -- he  
19 has his own independent practice.

20 Q. Outside counsel for Albertsons?

21 A. At times, yes.

22 Q. Do you know when he was first retained  
23 by Albertsons?

24 A. I don't.

25 Q. Any idea what year it may have been?

1           A.    I don't -- no.  Maybe 2016, '17, '18,  
2           somewhere in that timeframe probably.

3           Q.    Do you know why he was initially  
4           retained by Albertsons?

5           A.    Initially, no, I don't.

6           Q.    Do you know what the scope of his work  
7           with Albertsons has been, since he has been  
8           retained?

9           A.    I know he had worked with us on cases  
10          that we've -- at least one case that we've had in  
11          a different state.

12          Q.    When you say "case," do you mean a  
13          lawsuit?

14          A.    I don't know if I would categorize it  
15          as a lawsuit.

16          Q.    What would you categorize it as?

17          A.    This was a case involving one of our  
18          pharmacies in -- in Wyoming.  I'm not sure how to  
19          categorize it.  I don't remember if it was -- if  
20          it was technically a lawsuit or not.  Sorry.

21          Q.    Do you remember what -- was it a  
22          dispute?

23          A.    Yeah.  We were working with the DOJ in  
24          Wyoming on this.

25          Q.    Okay.  And do you know if that issue

1 with the DOJ ultimately resolved at some point?

2 A. It did.

3 Q. Do you know how it resolved, what the  
4 resolution was?

5 A. Yes. We ended up paying a fine for it.

6 Q. Do you know what that fine was?

7 A. Yeah. I think it was a million  
8 dollars. I'm just thinking through. I want to  
9 make sure. I think, yes.

10 Q. Was that for dispensing violations at  
11 Albertsons pharmacies?

12 MR. DORAN: Objection.

13 THE WITNESS: I believe so.

14 Q. BY MR. LICHTER: Were those violations  
15 related to controlled substances?

16 A. Yes.

17 Q. And was Mr. Cote hired as a consultant  
18 for Albertsons?

19 MR. DORAN: Objection.

20 And I'll just sort of interject to  
21 caution a little bit with respect to Larry Cote's  
22 role. He was an attorney, and I know that  
23 their -- some of his work with the company would  
24 be protected by attorney-client privilege. We  
25 understand that -- some of the communications he

1     had, we have produced in this matter, largely  
2     because of certain rulings that have suggested  
3     that some of the advice that might be more  
4     regulatory is not protected by attorney-client  
5     privilege. But we certainly disagree. With that  
6     ruling, we are abiding by and produced some of  
7     these communications.

8                 But I just want to caution the witness  
9     to be careful with respect to where that legal and  
10    regulatory divide exists. So answer to the extent  
11    you can. And -- and if I feel like we're getting  
12    into more of the legal part, I might object. So I  
13    just wanted to put that on the record to caution  
14    you on Larry Cote's role.

15                So -- and I apologize, that was really  
16    lengthy, and I know you had a pending question.  
17    So if you want to read the question back.

18                Q.    BY MR. LICHTER: It was, was Mr. Cote  
19    hired as a consultant for Albertsons?

20                A.    I believe he was our outside counsel.  
21    So if that counts as a consultant, then yes. If  
22    it is not, then no.

23                Q.    Do you know if he was hired in a role  
24    other than as outside counsel?

25                A.    I don't know. I -- I -- I guess I'm

1 not sure.

2 Q. Okay. In the e-mail, the reference to  
3 P&P, does that stand for policies and procedures?

4 A. It does.

5 Q. And the appropriate dispensing  
6 materials referenced in that e-mail, is that the  
7 appropriate dispensing of controlled substances  
8 document that Albertsons developed in 2013?

9 A. Can you point it out, so I can read it  
10 again?

11 Q. Sure.

12 It is in Jessica's e-mail that says:  
13 "Lynette - attached are copies of the appropriate  
14 dispensing materials referenced to share with  
15 Larry. It is a standalone doc and the excerpt  
16 from P&P."

17 So my question is, this reference to  
18 appropriate dispensing materials, is that a  
19 reference to the 2013 document entitled  
20 Appropriate Dispensing of Controlled Substances,  
21 or do you understand that to be something else?

22 MR. DORAN: Objection.

23 THE WITNESS: I honestly don't remember.

24 Q. BY MR. LICHTER: Okay. Do you know  
25 Albertsons was sharing its dispensing policies

1 with Larry Cote at this time, in 2019?

2 A. I assume it was something he requested.

3 Q. No other reason you can think of?

4 A. Other than it likely involved the case  
5 at Store 60.

6 Q. So the subject where it says, DEA 0060,  
7 you understand that to be a reference to  
8 Albertsons Store No. 60 in Wyoming?

9 A. Yes.

10 Q. Okay. Go to page 1 of the document,  
11 the middle e-mail from Lynette Berggren to  
12 Jessica Covaci. I think you're also cc'd on it.

13 Is this an e-mail you received from  
14 Jessica Covaci on August 22, 2019?

15 Do you see that there?

16 A. In the middle of page?

17 Q. Page 1. The e-mail that says, FYI?

18 A. That is from Lynette Berggren, not from  
19 Jessica Covaci.

20 Q. Sorry. From Lynette Berggren to  
21 Jessica Covaci with you cc'd?

22 A. That's correct. Yes.

23 Q. You received that from Lynette Berggren  
24 on August 22, 2019?

25 A. Yes.

1           Q.    That e-mail says:  "FYI.  See below --  
2   Larry's suggestions for our red flags document and  
3   P&P's."

4                   Do you know what -- what she's  
5   referring to here by the red flags document?

6           A.    Our company -- we have a standalone  
7   red flags document.  And we also incorporated it  
8   into our policies and procedures at some point in  
9   time prior to this.  But essentially, it is -- it  
10   is our kind of training on -- policies and  
11   training on corresponding responsibility.

12           Q.    Okay.  Right above that, you respond to  
13   say:  "My thoughts in red."

14                   Do you see that?

15           A.    Yes.

16           Q.    Okay.  We can move down to the bottom  
17   of the e-mail on that page to see the thoughts  
18   that you included.  This e-mail obviously isn't in  
19   color.  But this is the e-mail, at the bottom of  
20   the page, that you just referenced where you  
21   included your thoughts in red, correct?

22           A.    That's what it looks like, yes.

23           Q.    Okay.  And this is originally an  
24   August 22, 2019, e-mail from Larry Cote to  
25   Lynette Berggren, correct?



1           A.     Correct.

2           Q.     Okay. In Larry Cote's original e-mail,  
3 he writes: "Just a few comments on these:

4                     "Do you want/need to articulate a  
5 policy that if the red flags cannot be resolved,  
6 the pharmacists should not fill the rx?"

7                     Do you see that?

8           A.     Yes.

9           Q.     Okay. And at this time, was Larry Cote  
10 included in this discussion to help draft or edit  
11 Albertsons' dispensing policies?

12           MR. DORAN: Objection.

13           THE WITNESS: I don't recall a specific  
14 purpose. I don't recall.

15           Q.     BY MR. LICHTER: Okay. From a policy  
16 standpoint, is it important for Albertsons'  
17 pharmacists to resolve red flags on prescriptions  
18 before they dispense those prescriptions?

19           A.     Yes.

20           Q.     Why is it important?

21           A.     Why is it important?

22           Q.     Yes.

23           A.     Because we want to make sure that we're  
24 dispensing appropriately for patients that have a  
25 legitimate medical need and an appropriate

1 relationship with the prescriber.

2 Q. And the way to determine that  
3 legitimate medical need is to resolve any red  
4 flags, correct?

5 A. That's one of the ways, yes.

6 Q. Okay. Is documentation of that  
7 resolution important?

8 A. Yes. We -- we -- we definitely want  
9 our pharmacists to document.

10 Q. Why is it important?

11 A. For questions that come up later and  
12 so that there can be proof of what was performed.  
13 Not that lack of documentation means it wasn't  
14 performed, but the documentation helps reinforce  
15 the fact that the -- the resolution happened.

16 Q. Okay. So, again, Larry's e-mail asks:  
17 "Do you want/need to articulate a policy that if  
18 the red flags cannot be resolved, the pharmacist  
19 should not fill the prescription?"

20 And then your response that you  
21 included is: "No. Pharmacist may need to fill  
22 another script to prevent withdrawal, etc. (last  
23 and final fill). We need to word it to give them  
24 some flexibility for patient safety sake."

25 Is that right, that was one of the

1 thoughts you included in the e-mail?

2 A. Yes. Yes.

3 Q. So was it Albertsons' policy in 2019  
4 that if a pharmacist could not resolve the red  
5 flags identified on an opioid prescription, the  
6 pharmacist was still allowed to dispense the  
7 prescription?

8 A. The pharmacist was always expected  
9 to use their professional judgment when filling  
10 prescriptions. So -- and included in that  
11 would -- would be looking at all of the red  
12 flags, identifying and -- identifying and  
13 resolving them.

14 Correct, that if the red flags  
15 couldn't be resolved, the pharmacist should take  
16 appropriate action on that specific prescription,  
17 which may include, and likely include, not filling  
18 it most of the time, yes.

19 Q. But Albertsons didn't prohibit its  
20 pharmacists from filling prescriptions, even  
21 though red flags couldn't be resolved on it; is  
22 that right?

23 A. We required their -- their professional  
24 judgment to take place. There was no -- I have to  
25 say our policies exactly how they were written at

1 the time. But we did say that red flags needed to  
2 be resolved before -- before dispensing.

3 Q. Aren't you saying right here that  
4 red flags do not need to be resolved prior to  
5 dispensing in the event the pharmacist's  
6 discretion is in play?

7 MR. DORAN: Objection; misstates the  
8 document.

9 THE WITNESS: Those were -- well, if you  
10 read up above, those were comments on -- on his.  
11 Those weren't final policies that went out. So  
12 this was comments and then comments on his  
13 comments. So don't -- you can't interpret these  
14 as the actual policies that went out. These were  
15 just comments and feedback.

16 Q. BY MR. LICHTER: So this was not an  
17 Albertsons policy at this time?

18 A. I would have to look at our policies to  
19 see exactly how it is worded.

20 Q. Would you have been -- would your  
21 comment here -- could your comment here have  
22 violated an Albertsons policy when you wrote it?

23 A. The comment -- I'm just rereading the  
24 statements. So pardon my pause.

25 Q. Sure.

1           A.    You know, at this time, I would have to  
2    see what the policies dictated at this time to see  
3    if that comment was an actual -- would have  
4    contradicted it.   So I'm not sure.

5           Q.    So sitting here, you don't know whether  
6    or not your answer to this question was a -- was  
7    in accord with Albertsons' policies?

8           A.    I'm saying at the time we were -- we  
9    were discussing options.   And my comment at the  
10   time was a suggestion, and I don't -- I don't know  
11   or recall exactly how we ended up filing this.   We  
12   just ended up saying we're going to talk about it  
13   later.   And I don't recall the final decision on  
14   that.   I would have to look at the policies at  
15   that time to see what the final decision was, if  
16   anything was changed.

17          Q.    And this was your suggestion as the  
18   Vice President of Pharmacy Compliance at the time?

19          A.    It was my thoughts at the time, yes.

20          Q.    Okay.   And you don't know one way or  
21   the other if those thoughts contradicted  
22   Albertsons' policies and procedures?

23          A.    I would have to look at the exact  
24   policy as it was written at that time.   I don't  
25   remember that right now.   But it was -- you know,

1 we were taking patient safety into -- into mind at  
2 the time. And I don't remember how that was later  
3 interpreted and whether we made any changes based  
4 on that.

5 Q. So do you know if Albertsons' policies  
6 ever prohibited pharmacists from filling  
7 prescriptions that had unresolved red flags on  
8 them?

9 A. I don't think our policies specifically  
10 had a prohibition of filling prescriptions.

11 Q. That had unresolved red flags on them,  
12 correct?

13 A. Correct.

14 The comment there, again, was -- again,  
15 patient safety is something that has to be taken  
16 into mind. And there's actions that a pharmacist  
17 could do to ensure a patient is safely handled and  
18 withdrawn off of a product that perhaps is at too  
19 high of a dose or -- or a dose that they are not  
20 comfortable with.

21 Q. And one of the examples you gave here  
22 in your comment is that if a patient is in  
23 withdrawal, that would be an appropriate  
24 circumstance by which to dispense an opioid  
25 prescription with an unresolved red flag?

1           A.    I think the comment says to prevent  
2    withdrawal.

3           Q.    Right.

4           A.    So I'm not sure if you're familiar with  
5    withdrawal, but it can be a --

6           Q.    I have passing familiarity. But if you  
7    would like to explain your comment further.

8           A.    It can be -- it can be very  
9    significant, especially in this almost  
10   life-threatening, typically, situation. So if a  
11   patient was on a very high dose -- I'm giving an  
12   example.

13                   If a patient was on a high dose of an  
14   opioid and a pharmacist was not comfortable with  
15   that high dose of an opioid, for professional  
16   reasons, if they were to completely cut that  
17   patient off, one potential impact could be that  
18   patient could go into withdrawal. So you have  
19   to consider and weigh all of those balances,  
20   which is why we always rely on professional  
21   judgment for the final decision on whether to  
22   dispense or not.

23           Q.    Are you familiar with Albertsons'  
24   Controlled Substance Monitoring Program or CSMP?

25           A.    Yes.

1 Q. Okay. What do you understand that to  
2 be?

3 A. It is a conglomerate of all our  
4 activities and actions we use to oversee and  
5 monitor the dispensing and handling of controlled  
6 substances in our company.

7 Q. Does it also include distribution of  
8 controlled substances?

9 A. No. It is on the dispensing side.

10 Q. Did Albertsons ever conduct any formal  
11 audits or investigations to determine if it's  
12 suspicious monitoring was compliant with any state  
13 or federal laws?

14 A. Can you repeat the question, please?

15 Q. Sure.

16 Did Albertsons --

17 A. We're talking about distribution again  
18 now?

19 Q. Yeah.

20 A. Okay.

21 Q. Did Albertsons ever conduct any formal  
22 audits or investigations to determine if its  
23 suspicious order monitoring was compliant with any  
24 state or federal laws?

25 A. Not that I'm aware of.



1 Q. How about third party audits or  
2 investigations?

3 A. Third party audits? Meaning using an  
4 outside entity?

5 Q. Yes.

6 A. I want to make sure I'm clear.

7 Q. Right. Yes.

8 A. Not that I'm aware of.

9 Q. Has Albertsons ever -- excuse me,  
10 strike that.

11 Has Albertsons ever been a member of  
12 the Healthcare Distribution Alliance?

13 A. I don't know.

14 Q. Okay. If Albertsons has ever been a  
15 member of the National Association of Chain  
16 Drugstores?

17 A. Yes.

18 Q. Do you know for what states?

19 A. I don't, but we're still a member.

20 Q. Do you know what working groups  
21 Albertsons is involved in?

22 A. A number of them. Did you want me to  
23 try to list them?

24 Q. You can.

25 A. Or if you have a specific question.

1 Q. Did -- any working groups related to  
2 dispensing of controlled substances?

3 A. I guess there is a group focused on --  
4 I don't know the exact name of it, so I can't tell  
5 you the exact name of it. There's a group focused  
6 on opioids and opioid legislation and activities  
7 around opioids.

8 Q. Do you know who represents the  
9 Albertsons in that working group?

10 A. Right now, it is my Director of  
11 Compliance. And I'm --she's the primary and I am  
12 secondary on that group.

13 Q. What's her name?

14 A. Ready? Lenna Israbian-Jamgochian.  
15 L-e-n-n-a -- I'm going to try to spell it.

16 Q. I didn't know if she needed you to  
17 spell it.

18 THE COURT REPORTER: Please.

19 THE WITNESS: I-s-r-a-b-i-a-n -  
20 J-a-m-g-o-c-h-i-a-n. I'm going by memory and  
21 without writing it out. So I hope that's correct.

22 Q. BY MR. LICHTER: Okay. And you said  
23 you both are involved in -- in this working group?

24 A. Yes.

25 Q. Okay. Do you know for how long

1     Albertsons has been involved in this opioid  
2     working group?

3             A.     Since it began. I think it is a couple  
4     of years -- well, it has probably been maybe three  
5     or four years, just estimate.

6             Q.     And how often does the working group  
7     meet?

8             A.     Rarely.

9             Q.     More than once a year?

10            A.     Ad hoc. Lately, no. Initially, it  
11     probably was when it first started out. But no,  
12     not much at all.

13            Q.     And you were saying that they -- they  
14     meet on an ad hoc basis?

15            A.     Yes.

16            Q.     What would be the reason for the group  
17     to meet?

18            A.     They call a meeting. They want to  
19     discuss usually some legislation or something that  
20     is -- that is active around opioids for an -- for  
21     an informative purpose.

22            Q.     Has Albertsons ever incorporated any  
23     information from the NACDS into its formal  
24     policies and procedures?

25            A.     Not that I can recall.

1           Q.    Has Albertsons ever been a member of  
2   the Pharmaceutical Research and Manufacturers of  
3   America?

4           A.    Not that I know of.

5           Q.    Has Albertsons been a member of any  
6   other trade groups related to the distribution or  
7   dispensing of opioids?

8           A.    Specifically of opioids? Not that I'm  
9   aware of, no.

10          Q.    How about of controlled substances?

11          A.    No.

12          Q.    No other working groups related to  
13   dispensing of controlled substances that we  
14   haven't covered yet?

15          A.    No.

16          Q.    Does Albertsons have any corporate  
17   policies in place that dictates the minimum amount  
18   of staff required to work at any given pharmacy?

19          A.    Minimum required?

20          Q.    Yeah.

21          A.    Just legalities. We have to have a  
22   pharmacist, obviously, on duty for a pharmacy.  
23   But minimum required can -- required being the  
24   key word, no.

25          Q.    Are there any limitations to the number

1 of hours the pharmacist is allowed to work a given  
2 day or week?

3 A. There's state laws. We -- we follow  
4 state laws in that area, as far as if there's --  
5 if that state institutes a minimum or maximum.  
6 Not minimum, but maximum number of hours. I don't  
7 think there's a set standard across the country, I  
8 guess is what I'm saying.

9 Q. As far as Albertsons' policies are  
10 concerned, right?

11 A. To the best of my knowledge.

12 Q. So the same answer for limitations on  
13 the number of hours that a pharmacy technician is  
14 allowed to work?

15 A. Correct. Yeah.

16 These are HR policies. And I just want  
17 to -- I'm not an expert on the HR policies.

18 Q. Okay. Are there any particular  
19 prescription fill goals Albertsons establishes for  
20 its pharmacists?

21 A. For a pharmacist? No.

22 Q. For anyone?

23 A. I mean, for a division. I mean, then  
24 that gets broken down. There are goals. There's  
25 volume goals. But not for an individual

1 pharmacist or an individual person.

2 Q. Are goals set for individual stores?

3 A. I don't know if they are set at store  
4 level. They are set at a more macro level and  
5 then divided out. How each division divides those  
6 out may be different, but I don't know of a  
7 national way that each store is -- so I guess part  
8 of my answer is I don't know for sure. But I do  
9 know that they are set at a larger -- at a higher  
10 level.

11 Q. How about goals for prescription fill  
12 timing? Albertsons establish anything like that  
13 for its stores?

14 A. No.

15 You mean like so many prescriptions a  
16 minute or something like that?

17 Q. Or filling a prescription in under  
18 5 minutes, 15 minutes, anything like that?

19 A. No.

20 Q. Okay. Has there ever been?

21 A. Not that I recall, no.

22 Q. Okay. Are you aware of any external  
23 audits or investigations conducted on any  
24 Albertsons pharmacies located in Tarrant County,  
25 related to the dispensing of opioids?

1           A.    External investigations?  So I  
2    became aware of DEA inspections at a couple of  
3    Texas locations in 2019.  And we provided some  
4    prescriptions to the DEA that were for a  
5    prescriber that were requested.  I don't know the  
6    store numbers off the top of my head though.  I  
7    just became aware of it recently.

8           Q.    Two store numbers?

9           A.    Pardon me?

10          Q.    Two store numbers?

11          A.    I believe it was two that were in  
12    Tarrant County.  And the other one was in Texas,  
13    but it may not have been Tarrant County.

14          Q.    Those were all in or around 2019, you  
15    said?

16          A.    Yes.  Yes.

17          Q.    Those all involve the DEA asking  
18    records for certain prescribers?

19          A.    A prescriber, yes.

20          Q.    A prescriber?

21                   Was it the prescriber for each of the  
22    requests?

23          A.    I believe so, yes.

24          Q.    Do you know the name of the prescriber?

25          A.    It is like -- I don't know it began

1 with an A, it is like Aruba or Abdullah or -- I  
2 don't remember exactly. Sorry.

3 Q. Other than requests for this doctor's  
4 prescriber records, are you aware of any other  
5 audits or investigations on any Tarrant County  
6 pharmacies?

7 A. No.

8 Q. And other than the compliance audits  
9 that we previously discussed and the general  
10 gambit of the District Pharmacy Manager  
11 responsibilities, are you aware of any other  
12 internal audits or investigations for any of  
13 Albertsons' pharmacies in Tarrant County?

14 A. So I don't know if -- we do store  
15 reviews. I mean, part of our CSMP is our pharmacy  
16 to do store dispensing reviews. And we've done a  
17 number of reviews, including those in  
18 Tarrant County, I would assume.

19 Q. So do you know -- you said, "I would  
20 assume." Do you know for a fact whether  
21 Albertsons has conducted any specific store  
22 reviews for its pharmacies in Tarrant County?

23 A. I know in Texas. I just don't know if  
24 they are in Tarrant County. They probably have  
25 for Tarrant County, too. It is a big county.



1 Q. Do you know about how many would have  
2 been conducted in Texas?

3 A. I don't.

4 Q. Any ballpark estimate? Would it be  
5 100 or 5?

6 A. Over what timeframe?

7 Q. Over the entire timeframe.

8 A. I don't know. These were mostly  
9 prospective -- I mean, type of reviews. So I'm  
10 going to guess less than 100, more than 5.

11 Q. Okay.

12 A. Sorry.

13 Q. You can't do any better than that?

14 A. I -- I honestly don't know. I couldn't  
15 even guess at this point.

16 Q. But none that you're aware of occurring  
17 in Tarrant County?

18 A. I'm just not 100 percent sure it was  
19 Tarrant County. I know there were a couple that  
20 in were in Texas that -- that we did. I just  
21 don't recall if they were specifically  
22 Tarrant County. I apologize.

23 Q. Other than those requests for  
24 prescriber records, are you aware of any other  
25 communications between Albertsons and the DEA,

1 relating to the distribution or dispensing of  
2 opioids in Tarrant County?

3 A. No, not that I can recall.

4 Q. How about the same question for  
5 communications between Albertsons and the Texas  
6 State Board of Pharmacy?

7 A. Regarding?

8 Q. Regarding the distribution or  
9 dispensing of -- of opioids in Tarrant County?

10 A. Not that I recall.

11 Q. Regarding those requests for the  
12 prescriber records of that Dr. Aruba or something  
13 similar --

14 A. I feel really bad because I probably  
15 totally butchered it.

16 Q. Do you recall if there was any  
17 resolution to those inquiries?

18 A. I believe the prescriber was indicted.  
19 That's all I know.

20 Q. Okay. Are you aware of any  
21 communications between Albertsons and any other  
22 governmental or administrative body relating to  
23 Albertsons' distribution or dispensing of opioids  
24 in Tarrant County?

25 A. No.

1           Q.    Okay.  Aware of any administrative or  
2   enforcement actions taken by any government body  
3   related to Albertsons' Tarrant County pharmacies?

4           A.    No.

5           MR. LICHTER:  Okay.  I have nothing further.

6           MR. DORAN:  I don't have any questions.

7           MR. LICHTER:  Okay.  Do you want to see if  
8   anybody on the phone has any questions for the  
9   witness?

10                  Okay.  I think we can go off the  
11   record.

12           THE VIDEOGRAPHER:  This concludes the  
13   deposition.  The time is 1:42 p.m.  Off the  
14   record.

15                  (The deposition concluded at 1:42 p.m.)

16                               -oo0oo-

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# V E R I F I C A T I O N

STATE OF IDAHO )

County of \_\_\_\_\_ )

I, 30(b)(6) - ANTHONY PROVENZANO, being  
first duly sworn on my oath, depose and say:

That I am the witness named in the foregoing deposition, taken on August 10, 2023, consisting of pages numbered 1 to 148, inclusive;

That I have read the said deposition and know the contents thereof; that the questions contained therein were propounded to me; that the answers to said questions were given by me, and that the answers as contained therein (or as corrected by me therein) are true and correct.

DEPONENT

Signed and sworn before me this            of            ,            .

NOTARY PUBLIC

Residing at

My commission expires

1                   R E P O R T E R ' S   C E R T I F I C A T E

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3

4                   I, BROOKE R. BOHR, a Notary Public in  
5                   and for the State of Idaho, do hereby certify:

6                   That prior to being examined, the  
7                   witness named in the foregoing deposition was by  
8                   me duly sworn to testify the truth, the whole  
9                   truth, and nothing but the truth;

10                  That said deposition was taken down by  
11                  me in shorthand at the time and place therein  
12                  named and thereafter reduced into typewriting  
13                  under my direction, and that the foregoing  
14                  transcript contains a full, true, and verbatim  
15                  record of the said deposition.

16                  I further certify that I have no  
17                  interest in the event of the action.

18                  WITNESS my hand and seal August 23,  
19                  2023.

20

21

22                  NOTARY PUBLIC in and for the State of Idaho;  
23                  residing at Meridian, Idaho.

23

24                  My commission expires October 23, 2025.  
25                  CSR No. 753

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